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In the Supreme Court of the United States

OCTOBER TERM, 1972

No.

FEDERAL POWER COMMISSION, PETITIONER

v.

TEXACO INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of the Federal Power Commission, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 1a-22a) is not yet reported. The initial order (No. 428) of the Federal Power Commission (App. D, *infra*, pp. 29a-46a), its order (No. 428-A) of amendment (App. E, *infra*, pp. 47a-49a), and its order (No. 428-B) denying rehearing (App. F, *infra*, pp. 50a-84a) are reported at 45 FPC 454, 45 FPC 548, and 46 FPC 47, respectively.

(1)

JURISDICTION

The judgment of the court of appeals was entered on December 12, 1972 (App. B, *infra*, pp. 23a-25a) and the Commission's petition for rehearing was denied on February 5, 1973 (App. C, *infra*, pp. 26a-28a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

QUESTION PRESENTED

Whether the Federal Power Commission has authority to exempt small producers from certain filing requirements under the Natural Gas Act, 15 U.S.C. 717, *et seq.*, and to regulate the interstate wholesale sales of such small producers indirectly through review in pipeline rate proceedings of the costs to interstate pipelines of purchasing gas from small producers.

STATUTES INVOLVED

Sections 4, 5, 7, and 16 of the Natural Gas Act, 15 U.S.C. 717e, 717d, 717f, and 717o, are set forth in Appendix G, *infra*, pp. 85a-93a.

STATEMENT**A. BACKGROUND**

In 1954, this Court held in *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, that the Federal Power Commission has jurisdiction under the Natural Gas Act, 15 U.S.C. 717, *et seq.*, to regulate well-head sales by producers of natural gas to interstate pipelines. Producers were thus required under Section 7(c) of the Act, 15 U.S.C. 717f(c), to obtain certificates of

public convenience and necessity to cover their sales to interstate pipelines; all contracts covering such sales were required to be filed with the Commission under Section 4(d) of the Act, 15 U.S.C. 717c(d), and all rates and charges were required under Section 4(a), 15 U.S.C. 717c(a), to be "just and reasonable." Under Sections 4 and 5 of the Act, 15 U.S.C. 717c and 717d, the Commission is empowered to inquire into the lawfulness of any rate and, in the event it finds a rate unlawful, to determine and prescribe the just and reasonable rate.

Following the *Phillips* decision, the Commission at first attempted to regulate producer sales on a traditional, individual basis. After this method of regulation proved thoroughly impractical, the Commission in 1960 instituted area rate proceedings to determine maximum producer rates for each of the major producing areas. See *Permian Basin Area Rate Cases*, 390 U.S. 747, 755-758. The area rate proceedings themselves have proved to be enormously complex, and the Commission has accordingly found its ability to meet its obligations under the Act to regulate producer sales to be critically dependent upon its authority under Section 16, 15 U.S.C. 717o, to "classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters."

Indeed, this Court has encouraged the Commission to make liberal use of this statutory authority to treat different classes of producers differently. The suggestion that small producers be exempted from cer-

tain provisions of the Act was first made by Mr. Justice Clark in dissent (*Wisconsin v. Federal Power Commission*, 373 U.S. 294, 329-330) and was later reiterated by him speaking for a majority of the Court (*Federal Power Commission v. Hunt*, 376 U.S. 515, 527). The Commission followed these suggestions in its first area rate proceeding and exempted small producers from various filing requirements under Sections 4 and 7 of the Act. 34 FPC 234, 235. On review, this Court sustained the Commission's separate treatment of small producers; it held (*Permian Basin Area Rate Cases*, *supra*, 390 U.S. at 787):

We conclude that these arrangements did not exceed the Commission's statutory authority. We recognize that the language of §§ 5 and 7 is without exception or qualification, but it must also be noted that the Commission is empowered, for purposes of its rules and regulations, to "classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters." § 16, 15 U.S.C. § 717o. The problems and public functions of the small producers differ sufficiently to permit their separate classification, and *the exemptions created by the Commission for them are fully consistent with the terms and purposes of its statutory responsibilities*. It is not without relevance that this Court has previously expressed the belief that similar arrangements would ameliorate the Commission's administrative difficulties. See *F.P.C. v. Hunt*, 376 U.S. 515, 527. [Emphasis supplied.]

In recent years, the Commission's difficulties in regulating producer sales have been compounded by the increasingly critical shortage of natural gas supplies. This shortage, which has been judicially recognized by this Court and the courts of appeals,¹ has seriously affected the ability of the Nation's major pipelines to meet the demands of their interstate markets. At the current time, some 26 curtailment proceedings—of the type before this Court last Term in *Federal Power Commission v. Louisiana Power & Light Co.*, 406 U.S. 621—have been initiated before the Commission. It is in this context that the Commission's special treatment of small producers in the instant controversy should be viewed.

B. PROCEEDINGS BEFORE THE COMMISSION

In July 1970, the Commission initiated the present proceedings by issuing a notice of proposed rule-making proposing to exempt from regulation under the Natural Gas Act all existing and future jurisdictional sales made by small producers² (35 Fed. Reg. 12220). Following the receipt of comments from numerous parties, the Commission issued Order No. 428 (App. D, *infra*, pp. 29a-46a). In that order, the Commission did not exempt small producer sales from all

¹See, e.g., *Federal Power Commission v. Louisiana Power & Light Co.*, 406 U.S. 621, 626; *Placid Oil Co. v. Federal Power Commission*, C.A. 5, No. 71-2761, decided April 16, 1973, slip op. at 23-30; *Public Service Commission for the State of New York v. Federal Power Commission*, 467 F.2d 361 (C.A.D.C.).

²Small producers are defined as those with jurisdictional sales of less than 10,000,000 Mcf of gas per year.

regulation, but rather adopted a form of regulation which it deemed appropriate in the circumstances.

The purpose and intended effect of the Commission's action were stated in Order No. 428 as follows (App. D, *infra*, pp. 31a-32a):

One of the important Commission responsibilities under the Natural Gas Act is to assure maintenance of an adequate gas supply for the interstate market. By our action herein, we are taking an important step forward to meet this responsibility. Upon review of the contentions made by the various parties, we have decided that both existing and future sales of small producers shall be regulated in the manner hereinafter provided.

Such action should encourage small producers to increase their exploratory efforts which are so important to the discovery of new sources of gas. Our purpose in taking action here is not to increase contract prices, but to facilitate the entry of the small producer into the interstate market and to stimulate competition among producers to sell gas in interstate commerce. We seek to assure the small producer that when he enters into a new contract for the interstate sale of gas, the provisions of his contract will not be subject to change. We also want to relieve the small producer of the expenses and burdens relating to regulatory matters. Our action should also ease the administrative burdens connected with processing small producer filings.³

³ While the Commission stressed the importance of small producer exploratory efforts, it also noted that actual small producer sales amounted to an average of only 10.52 percent of the needs of interstate pipelines (*id.* at 32a).

The action taken by the Commission was to establish a procedure whereby each small producer could obtain a blanket certificate to cover all existing and future sales. Once the blanket certificate was obtained, the small producer would be authorized to sell natural gas at negotiated contract prices whether or not such prices are in excess of the area rates established by the Commission; ' the small producers were relieved of all filing requirements under the Natural Gas Act or the Commission's regulations other than the requirement to file annual reports (*id.* at 38a-39a).

The Commission expressly stated that its action does not constitute "deregulation" of small producer sales (*id.* at 32a). Such sales would be regulated indirectly through review of purchased gas costs in pipeline rate proceedings (*ibid.*). Pipeline rates would be subject to reduction and refund to the extent that they were based upon small producer rates which were found to be unreasonably high when compared to the "highest contract prices for sales by large producers or the prevailing market price for intrastate sales in the same producing area" (*id.* at 37a). In order to assure the certainty of the capital flow necessary to encourage exploration and development by small producers, however, the Commission exempted small producers from any refund obligations (*id.* at 37a-38a).

*In Order No. 428-B, modifying Order No. 428 and denying applications for rehearing, the Commission ruled that sales made by small producers under blanket certificates could not be abandoned without Commission authorization pursuant to Section 7(b) of the Act, 15 U.S.C. 717f(b) (App. F, *infra*, pp. 54a-55a).

Finally, the Commission expressed its intention

* * * to review the prices established in new contracts or contract amendments relating to sales by small producers to assure the reasonableness of the rates charged by such producers pursuant to the action we are taking herein. In the event we determine that this approach is inimical to the interests of consumers, we shall take further action to protect the consumers. [App. D, *infra*, p. 40a.]

In April 1971, the Commission issued Order No. 428-A (App. E, *infra*, pp. 47a-49a) prescribing the form of the annual statement to be filled by small producers operating pursuant to blanket certificates. In July 1971, the Commission issued Order No. 428-B (App. F, *infra*, pp. 50a-84a) modifying Order No. 428 in certain respects and denying applications for rehearing.

C. THE DECISION BELOW

On petitions for review, the court of appeals, with one judge dissenting, set aside the Commission's orders establishing a blanket certificate procedure for small producers (App. A, *infra*, pp. 1a-22a). The court concluded that, by authorizing blanket certificates for small producer sales, the Commission had abdicated its statutory responsibilities under Sections 4 and 5 of the Act, 15 U.S.C. 717c and 717d, to insure that small producer rates will be "just and reasonable" (*id.* at 10a-16a). The court rejected the Commission's contention that small producer sales could appropriately be regulated indirectly through the review of purchased gas

costs in pipeline rate proceedings. The court held that the Commission could not review small producer rates indirectly on the basis of "factors which it does not regulate or which derive solely from market forces" (*id.* at 12a).

Judge Fahy dissented. Citing this Court's recent decision in *Federal Power v. Louisiana Power & Light Co.*, 406 U.S. 621, he concluded (*id.* at 19a-20a):

The Commission has made a judgment which I think is within the ambit of its competence and expertise not to require small producers to be bound to the area rate and certain filing requirements, on an experimental basis. * * * The Commission is attempting to learn whether under this program the small producers, relieved of much of the burden of regulation required of other classifications, can improve their exploratory efforts while charging rates which on review will nevertheless prove to be just and reasonable, and which will not adversely affect the consumer interests protected by the Act. [Footnotes omitted.]

REASONS FOR GRANTING THE WRIT

This case presents a significant question concerning the Commission's authority under the Natural Gas Act, 15 U.S.C. 717, *et seq.*, to make pragmatic adjustments in its regulatory procedures in order, consistently with its regulatory obligations, to help alleviate the shortage of natural gas which now concerns the nation. Small producers, although accounting for a relatively small percentage of natural gas sales to

interstate pipelines, have historically undertaken the bulk of all explorations for new natural gas supplies. The continuation and expansion of their exploratory activities are of major importance to the provision of adequate supplies of natural gas in the years ahead. It was in order to provide the necessary capital and incentive to stimulate the exploration efforts of small producers that the Commission promulgated the orders here under review.

In holding that the Commission may not issue blanket certificates to small producers and regulate small producer sales indirectly through the review of purchased gas costs in pipeline rate proceedings, the court of appeals deprived the Commission of an important tool for protecting the consuming public against continued and increasing natural gas shortages;⁵ the court also departed from the rationale of earlier decisions of this Court authorizing special treatment for small producers and establishing the appropriate criteria for determining whether producer rates are just and reasonable under the Act.

1. As we have noted, the Commission's authority to treat the class of small producers differently from other producers stems from Section 16 of the Act, 15 U.S.C. 717o, which provides in pertinent part:

The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regu-

⁵ Judge Fahy noted in dissent that "consumer protection is promised" by the Commission's orders (App. A, *infra*, p. 21a).

lations as it may find necessary or appropriate to carry out the provisions of this act. * * *

For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. * * *

The importance of Section 16 to the Commission's administration of the Natural Gas Act has been recognized by this Court. In *Federal Power Commission v. Louisiana Power & Light Co.*, *supra*, 406 U.S. at 642, the Court noted:

FPC and other agencies created to protect the public interest must be free, "within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances." *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942). Section 16 of the Act assures the FPC the necessary degree of flexibility * * *.

And in the *Permian Basin Area Rate Cases*, *supra*, the Court relied squarely on Section 16 in sustaining the Commission's special treatment of small producers (see p. 4, *supra*).

Contrary to the opinion of the court of appeals, the Commission has not attempted in this case, under the authority of Section 16, to exempt small producer sales from the substantive requirements of the Natural Gas Act. As we have pointed out (pp. 7-8, *supra*), the Commission repeatedly stated in Order No. 428 that it was not deregulating small producer sales, but was

adopting a mode of regulation which would stimulate exploration to help alleviate the natural gas shortage. Insofar as the substantive standards of the Act are concerned, all rates for jurisdictional sales by small producers must continue to be "just and reasonable" in compliance with Section 4(a) of the Act. And small producer rates remain subject to investigation and prospective reduction in Section 5 proceedings. In stating its desire to assure the small producer that the provisions of the new contracts "will not be subject to change" (App. D, *infra*, p. 31a), the Commission did not foreclose prospective rate modification under Section 5 where necessary to insure compliance with the "just and reasonable" standard. On this point, the Commission explicitly stated that it would "review the prices established in new contracts or contract amendments relating to sales by small producers to assure the reasonableness of the rates charged" and that it would "take further action to protect the consumers" in the event that "this approach is inimical to the interests of consumers" (*id.* at 40ea).

2. The holding of the court below that the Commission may not rely upon market factors in reviewing the lawfulness of small producer rates in the context of pipeline rate proceedings (see App. A, *infra*, pp. 11a-14a), is contrary to this Court's opinion in *Permian Basin Area Rate Cases*, *supra*. In *Permian*, the Court found that the record supported the Commission's determination that at that particular time contract or field prices negotiated on the open market could not be relied upon to produce just and reasonable rates. The Court refused, however, to fore-

close reliance on market factors in the future and specifically stated (390 U.S. at 795):

We do not now hold, and the Commission has not suggested, that field prices are without relevance to the Commission's calculation of just and reasonable rates under § 5(a). *The records in subsequent area rate proceedings may more clearly establish that the market mechanism will adequately protect consumer interests.* We hold only that, on this record the Commission was not compelled to adopt field prices as the basis of its computations of area rates. [Emphasis supplied.]

Since the Commission's decision in *Permian* in 1965 (34 FPC 159), this country has experienced a critical shortage of gas supply. Under present conditions, the Commission determined that reliance on the market mechanism would encourage the highly competitive small producers to explore for new supplies of natural gas and would result in just and reasonable rates in the best interests of consumers. This determination should have been upheld by the court of appeals.*

*The approach of the court below in striking down Order No. 428 is in marked contrast to the approach of the Fifth Circuit in *Placid Oil Co. v. Federal Power Commission*, *supra*, in upholding the Commission's order establishing just and reasonable rates in Southern Louisiana. In a footnote to its opinion, the Fifth Circuit referred to the Commission's small producer order in this case and stated (slip op. 68, n. 40): "We are very impressed by the pragmatic and flexible manner in which FPC has approached natural gas rate regulation as a whole." Earlier in its opinion the court noted (slip op. 34-35, n. 19): "Final administrative determination of 'just and reasonable' rates may get closer and closer to a basis of existing market conditions."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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Solicitor General.

SAMUEL HUNTINGTON,
Assistant to the Solicitor General.

LEO E. FORQUER,
General Counsel,

GEORGE W. MCHENRY, Jr.,
Acting Solicitor,
Federal Power Commission.

MAY 1973.

APPENDIX A

**United States Court of Appeals for the District of
Columbia Circuit**

No. 71-1560

TEXACO, INC., PETITIONER

v.

**FEDERAL POWER COMMISSION, RESPONDENT
MRS. JAMES R. DOUGHERTY, ET AL, INTERVENORS**

No. 71-1561

CONSOLIDATED GAS SUPPLY CORPORATION, PETITIONER

v.

**FEDERAL POWER COMMISSION, RESPONDENT
MRS. JAMES R. DOUGHERTY, ET AL, INTERVENORS**

No. 71-1603

**JAMES M. FORGOTSON, SR., AN INDEPENDENT NATURAL
GAS PRODUCER, PETITIONER**

v.

**FEDERAL POWER COMMISSION, RESPONDENT
MRS. JAMES R. DOUGHERTY, ET AL
TEXACO, INC., INTERVENORS**

(1a)

No. 71-1612

PUBLIC SERVICE COMMISSION OF THE STATE OF
NEW YORK, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT
TEXACO, INC., INTERVENOR

No. 71-1627

INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA,
PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

No. 71-1647

WARREN PETROLEUM CORPORATION, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

No. 71-1722

TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF
TENNECO, INC., PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

No. 71-1727

PHILLIPS PETROLEUM COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT
TEXACO, INC., INTERVENOR

No. 71-1729

TEXACO, INC., PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

*Petition for Review of an Order of the
Federal Power Commission*

Decided December 12, 1972

Mr. Richard A. Solomon, with whom *Messrs. Peter H. Schiff* and *Saul W. Baernstein* were on the brief, for petitioner in No. 71-1612.

Mr. Christopher T. Boland, with whom *Messrs. Robert G. Hardy* and *Jerome J. McGrath* were on the brief, for petitioner in No. 71-1627, also argued for petitioners in No. 71-1561 and 71-1722.

Mr. John T. Ketcham, with whom *Messrs. Kenneth Heady*, *Warren M. Sparks*, *Charles E. McGee* and *Robert J. Haggerty* were on the brief, for petitioner in No. 71-1647 and 71-1727 also argued for petitioners in Nos. 71-1560 and 71-1729.

Mr. Michael J. Manning, Attorney, Federal Power Commission for respondent. *Messrs. Gordon Gooch*, General Counsel, Federal Power Commission, *Leo E. Forquer*, Solicitor and *George W. McHenry, Jr.*, First Assistant Solicitor, Federal Power Commission were on the brief, for respondent. *Mr. J. Richard Tiano*, First Assistant Solicitor, Federal Power Commission at the time the record was filed, also entered an appearance for respondent.

Mr. Benjamin F. Vaughan, III, with whom *Mr. R. James George, Jr.*, was on the brief, for intervenors *Mrs. James R. Dougherty, et al.*

Messrs. J. Donald Annett and Kirk W. Weinert were on the brief for petitioners in No. 71-1560 and No. 71-1729 and Intervenor, Texaco, Inc.

Messrs. Norman A. Flannigan, Charles R. Brown, and Richard J. Connor, were on the brief, for petitioners in No. 71-1561.

Mr. Edward H. Forgotson, was on the brief, for petitioners in No. 71-1603.

Messrs. Melvin Richter, Dale A. Wright and Harry S. Welch were on the brief, for petitioner in No. 71-1722.

Messrs. L. Dan Jones and William I. Powell filed a brief on behalf of the Independent Petroleum Association of America, as *amicus curiae* urging affirmance.

Messrs. Philip R. Ehrenkranz and Clyde O. Martz filed a brief on behalf of Anderson Oil Company, et al and Hickerson Oil Company, et al as *amici curiae* urging affirmance.

Before FAHY, *Senior Circuit Judge*, ROBINSON and WILKEY, *Circuit Judges*.

Opinion by Circuit Judge Wilkey.

Dissenting opinion by Senior Circuit Judge Fahy at p. 18.

WILKEY, *Circuit Judge*: Petitioners seek review of orders of the Federal Power Commission¹ in Docket No. R-393, a rulemaking proceeding instituted by a Notice² entitled "Exemption of Small Producers

¹ The Commission's original Order No. 428 was issued on 18 March 1971. It was subsequently modified by Order No. 428-A, issued 9 April 1971, and Order No. 428-B, issued 15 July 1971.

² Issued 23 July 1970. It should be noted that some of the petitioners challenge the sufficiency of that notice. Since all important objections were raised and considered prior to the action of the Commission in Order No. 428-B, we do not agree that further publication is required by the Administrative Procedure Act. In any event, given our disposition of these cases, that issue need not be reached.

From Regulation.”³ These orders exempted all existing and future sales by “small producers”⁴ from direct rate regulation. Small producers could, thereunder, contract for the sale of their gas at any obtainable rates. The Commission proposed indirectly to control such rates by regulating, under standards set forth in the orders, the costs allowed to be incorporated in the rates of large producers and pipelines on resale of gas which originated with small producers. Even if resale rates were found excessive because the cost of small producer gas was “unreasonably high,” small producers would be under no duty to refund the absorbed excess to the large producers and pipelines. Since we conclude that the Commission exceeded its authority under the Natural Gas Act, the orders in Docket No. R-393 must be set aside.

I. THE ENDS

Our conclusion herein challenges neither the Commission’s motives nor its opinion that some form of deregulation of small producers might benefit the consumers of natural gas. The orders represent an imaginative attempt to deal with problems of enormous magnitude. A critical gas shortage, which has been

³ Joint Appendix (hereafter “J.A.”) at 1. The resulting Order 428 was entitled “Order Establishing Blanket Certificate Procedure For Small Producer Sales and Providing Relief From Detailed Filing Requirements.” As this opinion will explain, the actual terms of this order belie its title’s suggestion that its effect is more limited than that implied by the broad title of the Notice of Proposed Rulemaking.

⁴ Small producers are defined as those with jurisdictional sales of less than 10,000,000 Mcf of gas per year. Such producers would be required to submit annually a document setting forth pertinent information concerning their jurisdictional sales.

judicially recognized,⁵ faces the nation. The Federal Power Commission is confronted with an ever-increasing regulatory burden—and limited resources. These combine to produce administrative delay and threaten the Commission's ability adequately to control natural gas prices.

Since small gas producers have historically accounted for as much as 80% of new exploration, but have less ready access to the necessary capital than do large producers, after thorough study the Commission concluded that generally beneficial exploration activity would be encouraged by assuring stable revenue flows to small producers. From deregulation of small producers, realization of their full contract prices at market levels would become a certainty. Since the small producers only account for 10.5% of the gas put into pipelines, the FPC felt that any cost hike resulting from deregulation would have a minimal effect on consumers. Obviously, any step towards deregulation would lessen the Commission's administrative load.

This court also recognizes that the Commission was engaged in good faith, in what it felt was a valid extrapolation from judicial comments as to which solutions to these problems would be acceptable. In *FPC v. Hunt*, Justice Clark made the following suggestion for dealing with the Commission's docket congestion:

[T]he techniques of the National Labor Relations Board might be studied with a view to determining whether its exemption practices... might be helpful in the solution of the Commission's problems.⁶

⁵ See *Southern Louisiana Area Rate Cases v. FPC*, 428 F. 2d 407, 437 (5th Cir. 1970), *cert. denied*, 400 U.S. 950.

⁶ 376 U.S. 515, 527 (1964).

In more recent cases, this court has explicitly encouraged experimentation to meet the threat of a gas shortage.⁷ Given traditional judicial deference to the agency's expertise, the FPC obviously concluded that it would be allowed to embark upon, and later evaluate, an experimental approach to achieving the purposes of the Natural Gas Act.

II. THE MEANS

However, Congress has prescribed limits on the Commission's authority. The orders considered here can be upheld only if they comply with the specific provisions of the Natural Gas Act. The Commission may, of course, classify different types of producers, alter some filing requirements, and "make other pragmatic adjustments which may be called for by particular circumstances."⁸ However, the FPC must act "within the ambit of [its] . . . statutory authority."⁹ The Commission may not ignore the command of Section 4 (15 U.S.C. § 717(c)(a)):

All rates and charges made, demanded, or received by any natural-gas company for or in connection with the . . . sale of natural gas subject to the jurisdiction of the Commission . . . shall be just and reasonable, and any such rate or charge that is not just and reason-

⁷ *Public Service Commission v. FPC*, — U.S.App.D.C. —, — F.2d — (No. 71-1161, decided 29 March 1972, slip op. at 12) (*rehearing denied* 19 May 1972); *Public Service Commission v. FPC*, — U.S.App.D.C. —, — F.2d — (Nos. 71-1197, *et al.*, decided 16 May 1972), slip op. at 9.

⁸ *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942).

⁹ *FPC v. Natural Gas Pipeline Co.*, *supra*.

able is hereby declared to be unlawful. [Emphasis added.]¹⁰

The Commission must also heed similar language in Section 5 (15 U.S.C. § 717(d)):

Whenever the Commission, after a hearing had upon . . . complaint of any State, municipality, State Commission, or gas distributing company, shall find that *any* rate, charge or classification demanded, observed, charged, or collected by *any* natural-gas company in connection with *any* . . . sale of natural gas, subject to the jurisdiction of the commission . . . is unjust, unreasonable, unduly discriminatory, or preferential, the Commission *shall* determine the just and reasonable rate, charge, classification . . . or contract to be thereafter observed and in force, and *shall* fix the same by order . . . [Emphasis added.]

Ever since *Phillips Petroleum Co. v. Wisconsin*, the Commission, even against its own will, has had a judicially recognized duty to assume "jurisdiction over the rates of *all* wholesales of natural gas in interstate commerce"¹¹ to insure that all such rates comply with the statutory standard.

A

We cannot accept the Commission's argument that it may shirk this duty. To the extent that the Commission argues that Justice Clark's dicta in *Hunt*

¹⁰ The Supreme Court has described "the fixing of 'just and reasonable' rates" as "the heart of the new regulatory system." *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 611 (1944).

¹¹ 347 U.S. 672, 682 (1954). (Emphasis added.) It should be noted that Justice Clark, in dissent, conceded that "[o]n its face, this language brings every gas operator, from the smallest producer to the largest pipeline, under federal regulatory control." 347 U.S. 672, 691 (emphasis added).

imply that exemption of a class of producers from the statutory standard would be permissible, we note that reliance cannot be placed on the NLRB as a model. The National Labor Relations Act specifically permits the Labor Board to decline to exercise its own jurisdiction.¹² In contrast, as evidenced by *Phillips*, the Natural Gas Act does not give the Commission any such power. Only this year the Supreme Court specifically contrasted the FPC and the NLRB, suggesting that the former's jurisdiction will be broadly construed so that there are no "gaps" in the Natural Gas Act's "comprehensive and effective regulatory scheme."¹³ Further, the trials and experimentations which this court has previously approved have always been trials of new procedures consistent with the terms of the Natural Gas Act, not experimental attempts to amend, avoid or ignore these provisions.¹⁴

The Commission relies heavily on *Permian Basin Area Rate Cases*¹⁵ to support the proposition that it may exempt small producers from certain requirements. However, the "exemptions" approved there were from detailed filing requirements, not from all regulation. The Court in *Permian* specifically noted that "the exemptions created by the Commission" were "fully consistent with the terms and purposes of its statutory responsibilities."¹⁶

Thus the Commission's power, under Section 16 of the Natural Gas Act, to "classify persons and matters

¹² 29 U.S.C. 160(a).

¹³ *FPC v. Louisiana Power & Light Co.*, 406 U.S. 621, 631 (1972).

¹⁴ Deregulation is decidedly not one of the "policy decisions of the type [the FPC] . . . was created to make." See *Public Service Commission v. FPC* (No. 71-1161), *supra*.

¹⁵ 390 U.S. 747 (1968).

¹⁶ *Id.* at 787. (Emphasis added.)

within its jurisdiction" and to "prescribe different requirements for different classes" cannot validate this exemption of small producers. The Commission can only classify "[f]or the purposes of its rules and regulations." It can only prescribe rules and regulations "to carry out the provisions of this chapter." Section 16 thus does not give the Commission independent powers. Rather, it provides for implementation of the core sections of the Act, such as Section 4.

B

Nor can we accept the Commission's argument that it has met its obligation to insure the statutory standard of "just and reasonable" rates by indirectly controlling small producer prices through regulation of large producers and pipelines. That argument might have some merit if the Commission had provided that small producer rates could only be passed along on resale as legitimate costs if they met the "just and reasonable" standard.¹⁷ In essence, that is what the

¹⁷ However, in that event, we might have greater problems with the validity of subjecting the pipelines and large producers, who have made *unrefundable* payments to small producers, to the risk of *later* Commission determination, under such an imprecise standard, that the rates paid could not be passed along as legitimate costs. The Commission itself, in Order No. 428-B, recognized that it would be desirable for "the pipelines to know in advance the boundaries within which they could freely contract with small producers." J.A. at 246. Unfortunately, in the case at bar, the Commission chose a "more concrete guide" with no relation to the mandatory statutory standard.

Judge Fahy has suggested modification of the Order to strike its provisions prohibiting refunds from small producers and to leave open the Commission's authority to protect large producers and pipelines from unreasonably high small producer prices. That approach would only compound the un-

Commission was allowed to do in *Permian*. There, specific and direct regulation of small producer rates was held unnecessary because all such rates were required to be below the area ceiling rate—a rate level already determined by the Commission to be “just and reasonable.”¹⁸

Here, however, the Commission set forth a different sort of guideline for its indirect regulation. The novel tests proposed are nowhere spelled out in the Act or in any decision applying the Act. Small producer rates can only be passed along to consumers if they are not

unreasonably high, considering appropriate comparisons with *highest contract prices* for sales by large producers or the prevailing market, price for *intrastate* sales in the same producing areas.”

certainty and risk for all concerned. Moreover, it would defeat the basic purpose of the Order—encouraging exploration by assuring small producers of a steady flow of funds under their contract rates.

¹⁸ When the Commission says on pages 16 and 17 in its brief that the only difference in its new scheme from that which the Supreme Court approved in *Permian* in 1968 is that now the small producers are allowed to exceed the area rate ceiling determined to be just and reasonable, then of course the Commission is saying that the whole issue in the lawsuit is no different from *Permian*. That just isn't so. The absence of such a “just and reasonable” limit is the big difference. Order No. 428 not only allows small producers to exceed the reasonable and just area rate ceilings—it allows them to do so on the basis of the free market, which is the antithesis of regulation.

¹⁹ J.A. at 142. These standards apply to both pipelines and large producers. In addition, large producers may reflect their increased payments in rate increases only if the contract price differential between their purchase and resale prices is “consistent with prevailing price differentials in the area.” J.A. at 140.

Whether or not these two factors would establish precise boundaries on acceptable rates, the Commission has clearly tied its determination to factors which it does not regulate or which derive solely from market forces.²⁰ Large producers can, of course, contract for any prices, presumably in the hope that such payments must eventually be allowed under the regulatory scheme as legitimate costs actually incurred. *Intrastate* sale prices are at no point subject to regulation by the Commission.

The Commission has a duty to insure that all rates are "just and reasonable."²¹ At best, the indirect controls it has proposed will insure that the small producer rates which are passed on to consumers are below levels set by private contracting parties (or potentially by state regulation which is not necessarily tied to the federal standard). Nothing at all insures that those levels will be "just" or "reasonable." That is the essential flaw in the Commission's plan. That is the point at which the FPC abdicates its regulatory

²⁰ In the different context of individual ratemaking proceedings, this court has insisted that the Commission's determinations be "anchored" to factors with some meaningful relationship to what is "just and reasonable." See *City of Chicago v. FPC*, — U.S. App. D.C. —, 458 F. 2d 731, 750 (1971), *cert. denied*, 405 U.S. 1074 (17 April 1972); and *City of Detroit v. FPC*, 97 U.S. App. D.C. 260, 230 F. 2d 810 (1955), *cert. denied*, 352 U.S. 829 (1956). As the court noted in *City of Detroit*, a new Commission approach to regulation is not invalid merely because it departs from the traditional rate-base or cost-of-service methods. However, even granting the legitimacy of indirectly regulating small producer rates, the standards set forth in Order No. 428 have not been demonstrated to have any relationship at all to the statutory standard.

²¹ To the extent that new sales are covered by the blanket small producer certificates, the Commission has also abandoned any attempt to scrutinize the rates involved in such sales against Section 7's standard of "public convenience and

responsibility in derogation of the purposes and mandatory terms of the statute. Indirect "regulation" by such novel "standards" is worse than an exemption simpliciter. Such an approach retains the false illusion that a government agency is keeping watch over rates, pursuant to the statute's mandate, when it is in fact doing no such thing.

One variant of the "indirect regulation" argument might contend that, while the *Commission* would no longer be regulating rates, the *market mechanism* itself would, in effect, dictate small producer prices which were "just and reasonable." However, though

necessity." Were that the only effect of Order 428, we might have a different case. If there remained a potential for future review under the standards of Sections 4 and 5, the "public convenience and necessity" might indeed be served by temporarily allowing certification of rates meeting the novel standards proposed by the FPC. Indeed, rates are "not . . . the only factor bearing on the public convenience and necessity." *Atlantic Refining Co. v. Public Service Commission*, 360 U.S. 378, 391 (1959). Unlike the situation in *Atlantic Refining*, small producer rates would probably not set a pattern for the whole industry. However, the Commission here abandoned *any* future rate review under the "just and reasonable" standard. In its more recent rulemaking Orders Nos. 455 and 455-A, the Commission seems to have admitted that it has no such power. Those Orders, consolidating the Section 4 and Section 7 tests in an optional certificate procedure for new gas sales, also sought to assure producers of certain receipt of their certified contract rates. In that context, the Commission conceded that "[w]e cannot bind a future Commission not to invoke the prospective operation of Section 5, nor do we attempt to do so." *Mimeo*, pp. 9-10. In marked contrast is the Commission's statement regarding Order No. 428: "We seek to assure the small producer that when he enters into a new contract for the interstate sale of gas, the provisions of his contract will not be subject to change." We conclude that Order No. 455 contains the more correct view of the statutory limits on the Commission's power.

ingenious on a semantic level, that argument ignores the essential difference between a regulated and an unregulated industry. Put simply, the latter is governed by the market while the former, by definition, is the subject of active governmental control.

More importantly, such a post hoc rationalization does not coincide with the Commission's own view of its Order. The FPC flatly concedes that "[t]he Commission's order does not purport to determine the just and reasonable rates for sales by small producers."²² To the contrary, the Commission's basic contention all along has been that the "just and reasonable" standard was not mandatory and that the FPC can simply choose not to regulate rates.²³ It strains credulity to assert that the Commission meant to achieve just and reasonable rates through normal market forces, while in the very same Orders it refused to let pipelines and large producer plant operators pass on these "just and reasonable" rates without further review under new non-statutory standards. Since the Commission itself has not been confident enough to conclude that the market will necessarily yield rates that comply with the statute, this court can hardly uphold the Orders on that ground.

Our dissenting colleague believes that "[t]he Commission has made a judgment which I think is within the ambit of its competence and expertise not to require small producers to be bound to the area rate . . . on an experimental basis." (P. 20) But the "area rates" are the previously Commission-determined "just and reasonable" rates, from which, no matter how one phrases it, the small producers will be exempt, even though on an experimental basis. It is significant that the Notice for this rulemaking pro-

²² Commission's Brief at p. 35.

²³ Joint Appendix at p. 136.

ceeding was frankly titled "*Exemption of Small Producers from Regulation.*" Our dissenting colleague correctly notes that the Order which issued carried the title "Order Establishing Blanket Certificate Procedure for Small Producer Sales and Providing Relief from Detailed Filing Requirements." This rose by another name carries the same thorns.

Judge Fahy notes that the Commission intends to review the results of its experiment. Presumably, if that review showed unjust and unreasonable rates developing, the Commission would consider reinstating the regulatory scheme. However, even if it did so, the rates charged during the interim period would not have been subject to regulation. It seems most unlikely that any "further action to protect consumers" could legally reimburse those who made payments, valid under the Commission's own rules during that experimental period, were we to approve those rules here.

The Commission further defended its decision on the grounds that, given their limited percentage of the market, a rise in small producer prices will have no great effect on consumers." We doubt that the effect of potentially allowing greater than area ceiling rates for 10.5% of the gas sold can be considered *de minimis*. In any case, the long-range impact of these orders on consumers lies more in the principle they establish than in any immediate effect on prices. We think it undeniable that the Commission could, under its theory of this case, proceed to establish another class of "medium" producers, and provide the same or different appropriate exemptions for this new class, and Commission counsel so conceded in oral argu-

²⁴ A *de minimis* effect on consumer prices seemed to weigh with the Court in *Permian* with regard to one of the approved "exceptions." 390 U.S. 747, 786-87, n. 56, and accompanying text (1968).

ment. Likewise, the Commission could, again by its own fiat, change the definition of small producer to include those with greater volumes of jurisdictional sales.

If Order No. 428 is upheld, no limit appears which could halt gradual erosion of the statutory standard's applicability. Given the Commission's self-professed distaste for regulation, a decision upholding its approach here might soon yield further FPC decisions which made the instances where rates were determined by the "just and reasonable" standard the exception rather than the rule.

Whatever the wisdom of the policy at this critical juncture of our national energy source problems, we cannot hold that *non*regulation is the statutory equivalent of regulation. Only Congress can knowingly prescribe nonregulation for small producers in lieu of the existing statutory scheme of regulation found by the Supreme Court in *Phillips* to be mandatory under the Natural Gas Act for all producers.

III. MEANS TO THE DESIRED END

All of this is not to say that a proper regulatory determination, within the letter and spirit of the Natural Gas Act, could not set a just and reasonable rate for small producers higher than that for large producers. Given the special problems and practices of small producers, such a result is certainly conceivable. But the small producers cannot be exempted from the regulatory scheme, and have their prices tied to the free market, by administrative agency fiat.

Nor is the scheme saved by the laudable purpose of the Commission, described by our dissenting colleague: "The Commission is attempting to learn whether under this program the small producers, re-

lieved of much of the burden of regulation required of other classifications, can improve their exploratory efforts while charging rates which on review will nevertheless prove to be just and reasonable and which will not adversely affect the consumer interests protected by the Act." (P. 20) With all due respect to Judge Fahy and the Commission, what it is doing is experimenting to see if, after all, non-regulation of the small producers, letting market forces shape the price structure, will not in the long run be better both for industry and consumer. Whether this be so or not, the place for authorizing such experiments outside the present language of the Act is in Congress.²³ And, as noted immediately above in Part II, the means adopted by the Commission here are capable of being employed to the complete subversion of the regulatory scheme.

The Power Commission has made a conscientious and intelligent effort to cope with an enormous national problem. Where the Commission has failed is not in its diligence and its expertise. It has simply failed because the methods adopted do not square with its duties under the Natural Gas Act. This court's

²³ The Congress could itself classify small producers, exempt them from regulation for a designated period of time, and meanwhile order the Commission to gather empirical data to see if this is beneficial to the industry and to consumers of natural gas. While we do not reach the details of the Commission's plan here, we should note that the different parties pointed out various inequities, each from its own point of view. The Commission might be well advised to make certain refinements in its overall plan before recommending it to Congress. In particular, the standards to be applied to resale by non-exempt producers and pipelines would benefit from greater precision—so that these businesses could know in advance what their position would ultimately be and would not have to rely on the good will of the Commission for their economic salvation.

role, in regard to the actions of regulatory commissions, is to insure that such bodies comply with applicable legislation. The Commission's imagination and ingenuity here simply outran the statute. The place to bring these resources to bear is in Congress. If exemption is advisable, and the Commission appears to have made a powerful case that it is, Congress should have a receptive ear. In the interim, this court cannot ignore the statute or excuse the Commission from its duty.

Accordingly, the orders of the Commission in Docket No. R-393 are set aside.

So Ordered.

FAHY, *Senior Circuit Judge, dissenting*: I agree with the court that all rates and charges of any natural-gas company subject to the jurisdiction of the Natural Gas Act, which includes the small producers here involved, shall be just and reasonable and, if not, that they are unlawful. But we have no particular rate or charge before us for scrutiny as to its justness or reasonableness. Order No. 428 of the Commission, before us for review, was made in a rulemaking proceeding duly conducted. It passed upon no particular rate or charge of any or all small producers. It laid down certain guides within which small producers may contract for sales of their gas. It is properly entitled by the Commission as an "Order Establishing Blanket Certificate Procedure for Small Producer Sales and Providing Relief from Detailed Filing Requirements." The Commission explicitly relies upon the Supreme Court decision in *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968), to the effect that under section 16 of the Act,¹ for purposes of its rules and regulations, the Commission may "classify persons

¹ 15 U.S.C. § 717(o) (1970).

and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters." It cannot be questioned that it is within the power of the Commission separately to classify small producers.² The question really is whether the rules or regulations applied to this classified group are within the Act. More precisely, as it seems to me, the question is whether we can hold, on the record before us, that the type of regulation of prices adopted by the Commission has led or will lead inevitably to unjust or unreasonable rates charged by small producers to purchasers of gas from them, notwithstanding

[a] presumption of validity . . . attaches to each exercise of the Commission's expertise, and those who would overturn the Commission's judgment undertake "the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences"

. . . [I]t must be free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and conflicting interests.

Permian, supra, 390 U.S. at 767.

The Commission has made a judgment which I think is within the ambit of its competence and ex-

² *Permian, supra*, 390 U.S. at 787, where the Supreme Court stated:

"The problems and public functions of the small producers differ sufficiently to permit their separate classification, and the exemptions created by the Commission for them are fully consistent with the terms and purposes of its statutory responsibilities. It is not without relevance that this Court has previously expressed the belief that similar arrangements would ameliorate the Commission's administrative difficulties."

pertise^{*} not to require small producers to be bound to the area rate and certain filing requirements, on an experimental basis.⁴ A higher rate than that previously fixed for the industry in the area may be just and reasonable for the small producer as a separate classification within the area. The Commission is attempting to learn whether under this program the small producers, relieved of much of the burden of regulation required of other classifications, can improve their exploratory efforts while charging rates which on review will nevertheless prove to be just and reasonable, and which will not adversely affect the consumer interests protected by the Act. The Order provides:

We intend to review the prices established in new contracts or contract amendments relating to sales by small producers to assure the reasonableness of the rates charged by such producers pursuant to the action we are taking

^{*} Recently, in *FPC v. Louisiana Power and Light Co.*, 406 U.S. 621, 642 (1972) the Court referred to the Commission's authority under section 16 of the Act as follows:

"[T]he Commission must possess broad powers to devise effective means to meet these responsibilities. FPC and other agencies created to protect the public interest must be free, 'within the ambit of their statutory authority, to make pragmatic adjustments which may be called for by particular circumstances.' . . . Section 16 of the Act assures the FPC the necessary degree of flexibility. . . . In applying this section, we have held that 'the width of administrative authority must be measured in part by the purposes for which it was conferred. . . . Surely the Commission's broad responsibilities therefore demand a generous construction of its statutory authority.'"

"The court is not bound by Commission counsel's response during argument that the Commission could establish a class of "medium" producers for regulation similar to that which Order No. 428 applies to small producers.

herein. In the event we determine that this approach is inimical to the interests of consumers, we shall take further action to protect consumers.

The Commission is attempting "to reach an accommodation of conflicting interests, through experimentation, that will result in the proper alleviation of the gas shortage." *Public Service Commission of the State of New York v. FPC*, — U.S.App.D.C. —, — F2d — (1972).

I do not think the Commission has abdicated its responsibility to insure that rates of small producers will be just and reasonable. It does not appear from the record before us that any such price that might be charged is necessarily unjust or unreasonable. It is the Commission's assumption, given the small percentage of gas sales the small producers account for, and given their situation within the industry, that the rates to be collected from their sales of gas under this new plan will in fact be just and reasonable. The record before us does not rebut this assumption. Moreover, consumer protection is promised, and I cannot now hold that the promise will not be fulfilled. The Commission states:

The action taken here in our view does not constitute deregulation of sales by small producers. We will continue to regulate such sales but will do so at the pipeline level by reviewing the purchased gas costs of each pipeline with respect to small producer sales. We shall also provide certain other safeguards against unreasonably high small producer prices, as hereinafter discussed, to assure adequate protection of the consumer.

I have considered the contention that Order No. 428 discriminates against large producers vis-a-vis pipelines, but I find in this, as in other contentions

made, no reason to depart from my basic position that as the matter now comes before the court the Order should not be set aside.

I would, however, modify Order No. 428 in one respect. I would strike its provisions prohibiting refunds to pipelines and large producers, leaving open to the Commission to exercise such authority as it has to protect large producers and pipelines in the event the Commission finds they have been charged unreasonably high prices by small producers. As thus modified I would affirm Order No. 428 and its alphabetical series. Should such a modification temper to a degree the charges of small producers, I think that result must be accepted as required by the public interest represented by the Act. I do not think such possible tempering would go so far as to defeat the purposes of Order No. 428.

I respectfully dissent.

APPENDIX B

United States Court of Appeals for the District of
Columbia Circuit

No. 71-1560

TEXACO INC., PETITIONER

v.

FEDERAL POWER COMMISSION

No. 71-1561

CONSOLIDATED GAS SUPPLY CORP., PETITIONER

v.

FEDERAL POWER COMMISSION

MRS. JAMES R. DOUGHERTY, ET AL., INTERVENORS

No. 71-1603

JAMES M. FORGOTSON, SR., AN INDEPENDENT NATURAL
GAS PRODUCER, PETITIONER

v.

FEDERAL POWER COMMISSION

MRS. JAMES R. DOUGHERTY, ET AL., INTERVENORS

No. 71-1612

PUBLIC SERVICE COMMISSION OF THE STATE OF
NEW YORK, PETITIONER

v.

FEDERAL POWER COMMISSION

No. 71-1627

INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA,
PETITIONER

v.

FEDERAL POWER COMMISSION

No. 71-1647

WARREN PETROLEUM CORPORATION, PETITIONER

v.

FEDERAL POWER COMMISSION

No. 71-1722

TENNESSEE GAS PIPELINE CO., PETITIONER

v.

FEDERAL POWER COMMISSION

No. 71-1727

PHILLIPS PETROLEUM COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION

No. 71-1729

TEXACO, INC., PETITIONER

v.

FEDERAL POWER COMMISSION

*Petition for Review of Orders of the Federal Power Commission**Before: FAHY, Senior Circuit Judge, ROBINSON and WILKEY, Circuit Judges.*

JUDGMENT

These causes came on to be heard on a Petition for Review of orders of the Federal Power Commission and were argued by counsel. On consideration of the foregoing, it is

ORDERED AND ADJUDGED by this Court that the orders of the Federal Power Commission under review are set aside in accordance with the opinion of this Court filed herein this date.

Per Curiam.

For the Court.

/s/ Hugh E. Kline
HUGH E. KLINE, Clerk.

Dated: December 12, 1972.

Opinion by Circuit Judge Wilkey.

Dissenting opinion by Senior Circuit Judge Fahy.

APPENDIX C

**United States Court of Appeals for the District of
Columbia Circuit**

No. 71-1560

TEXACO INC., PETITIONER

v.

**FEDERAL POWER COMMISSION, RESPONDENT
MRS. JAMES R. DOUGHERTY, ET AL., INTERVENORS**

No. 71-1561

CONSOLIDATED GAS SUPPLY CORPORATION, PETITIONER

v.

**FEDERAL POWER COMMISSION, RESPONDENT
MRS. JAMES R. DOUGHERTY, ET AL., INTERVENORS**

No. 71-1603

**JAMES M. FORGOTSON, SR., AND INDEPENDENT NATURAL
GAS PRODUCER, 409 BECK BUILDING, SHREVEPORT,
LOUISIANA 71101, PETITIONER**

v.

**FEDERAL POWER COMMISSION, RESPONDENT
MRS. JAMES R. DOUGHERTY, ET AL., INTERVENORS
TEXACO, INC., INTERVENOR**

27a

No. 71-1612

PUBLIC SERVICE COMMISSION OF THE STATE OF
NEW YORK, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

No. 71-1612

TEXACO, INC., INTERVENOR

No. 71-1627

INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA,
PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

No. 71-1722

TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF
TENNECO INC., PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

No. 71-1727

PHILLIPS PETROLEUM COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT
TEXACO INC., INTERVENOR

No. 71-1729

TEXACO INC., PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

Before FAHY, *Senior Circuit Judge*; ROBINSON and
WILKEY, Circuit Judges.

ORDER

On consideration of the petition of the Federal Power Commission for rehearing, and the petition for rehearing filed for Mrs. James R. Dougherty et al., intervenors, it is

ORDERED by the Court that the aforesaid petitions for rehearing are denied.

Per Curiam

Senior Circuit Judge Fahy would grant the petitions for rehearing.

APPENDIX D

United States of America, Federal Power Commission
[18 CFR 154.91, 154.104, 154.110, 157.40, 250.10,
250.11]

Before Commissioners: JOHN N. NASSIKAS, *Chairman*;
LAWRENCE J. O'CONNOR, JR., JOHN A. CARVER, JR.,
and ALBERT B. BROOKE, JR.

Exemption of Small Producers From Regulation

Docket No. R-393

Order No. 428

ORDER ESTABLISHING BLANKET CERTIFICATE PROCEDURE
FOR SMALL PRODUCER SALES AND PROVIDING RELIEF
FROM DETAILED FILING REQUIREMENTS

(Issued March 18, 1971)

The Commission on July 23, 1970 issued a notice of proposed rulemaking in this proceeding (35 F.R. 12220, July 30, 1970) proposing prospectively to exempt from regulation under the Natural Gas Act all existing and all future jurisdictional sales made by small producers as defined therein. The proposal did not cover either percentage sales made by small producers pursuant to percentage sales contracts or sales to interstate pipeline companies by their affiliates.

In response to the notice comments were filed by seventy-three parties, including producers, pipeline and distribution companies, associations represent-

ing producer and distributor interests, and the California and New York State Commissions. A conference was also held in this case on December 8, 1970. The small producers support the exemption as originally proposed, while the large producers either oppose such exemption or question its advisability. Pipeline and distribution companies are divided on the issue, with one expressing outright opposition and some of the others suggesting extensive modifications. The American Public Gas Association and the California and New York State Commissions also oppose the proposal.

The small producers argue that traditionally they have been very aggressive in searching for new gas reserves but that such activity has been greatly curtailed in recent years, largely because of restrictive regulation. They further state that their drilling efforts often prove or disprove the presence of gas bearing structures, and that the information gained is useful to all producers, large and small, in their search for new gas supplies. Because of uncertainties in regulated prices, they claim that discontinuation of regulation, rather than higher ceiling prices alone, is necessary to provide the incentive required to encourage a substantial increase in exploratory drilling.

Opponents of the proposed exemption, on the other hand, contend that the proposal will lead to higher natural gas prices for small producer sales resulting ultimately in higher consumer rates. They also disagree with the view that the impact on the consumer will be minimal. In addition, they question the Commission's authority to exempt small producers.

We disagree with the argument that the provisions of Sections 4, 5 and 7 of the Act, which speak in terms of all sales in interstate commerce for resale by any natural gas company, are mandatory and leave no

room for administrative judgment and discretion. Mr. Justice Clark, speaking for the Court in *F.P.C. v. Hunt*, 376 U.S. 515 (1964) recommended that the Commission consider procedures for the exemption of small producers. And, in *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968), the Court, while recognizing that the language of Sections 5 and 7 is without exception or qualification, noted the power of the Commission under Section 16, for purposes of its rules and regulations, to "classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters."

One of the important Commission responsibilities under the Natural Gas Act is to assure maintenance of an adequate gas supply for the interstate market. By our action herein, we are taking an important step forward to meet this responsibility. Upon review of the contentions made by the various parties, we have decided that both existing and future sales of small producers shall be regulated in the manner herein-after provided.

Such action should encourage small producers to increase their exploratory efforts which are so important to the discovery of new sources of gas. Our purpose in taking action here is not to increase contract prices, but to facilitate the entry of the small producer into the interstate market and to stimulate competition among producers to sell gas in interstate commerce. We seek to assure the small producer that when he enters into a new contract for the interstate sale of gas, the provisions of his contract will not be subject to change. We also want to relieve the small producer of the expenses and burdens relating to regulatory matters. Our action should also ease the ad-

administrative burdens connected with processing small producer filings.

We have reviewed the impact of our action on 96 pipelines that purchase gas, based on 1969 statistics in forms 2 and 2-A. This shows, for example, that Kansas-Nebraska's purchases from small producers amount to 21.63% of its total gas supply including purchases from all producers, pipelines and its own production. Comparable percentages for many of the small gather-type pipelines were quite high. However, many of the major pipelines show less than 10%. Others show no purchases at all from small producers. The overall weighted average for the 96 companies was 7.54% (or 10.52% after eliminating all pipeline to pipeline sales).¹

The action taken here in our view does not constitute deregulation of sales by small producers. We will continue to regulate such sales but will do so at the pipeline level by reviewing the purchased gas costs of each pipeline with respect to small producer sales. We shall also provide certain other safeguards against unreasonably high small producer prices, as hereinafter discussed, to assure adequate protection for the consumer.

We are concerned that favored nation, price re-determination and spiral escalation provisions in small producer contracts may have an adverse impact on consumers. The filing of contracts containing such clauses executed on or after April 2, 1962, has previously been proscribed by the Commission as contrary to the public interest.² There is, of course, no objection to the use of these provisions to the extent the result-

¹ These statistics do not include resales to pipelines by large producers of gas purchased from small producers.

² Order No. 242, 27 FPC 339; *F.P.C. v. Texaco Inc.*, 377 U.S. 33.

ing rate does not exceed the applicable area just and reasonable rate ceiling, as provided in our *Permian* opinion, 34 FPC 159, 236, or, where none is available, the applicable area guideline initial rate ceiling. But these provisions should not be permitted to increase the contract price above such level. To do otherwise would clearly be contrary to the public interest. Consequently, this order will limit the use of these indefinite price escalation provisions by small producers.

The New York Commission contends that the proposed exemption may open the way for large producers to sell their gas in interstate commerce free from Commission regulation by selling their reserves in place to small producers, who would in turn resell the reserves under a conventional (exempt) sales contract to an interstate pipelines. To forestall this possibility, we shall provide that the exemption authorized here for small producers shall not apply to jurisdictional sales made by them where the gas reserves relating thereto were acquired by the purchase of developed reserves in place from a large producer. In such circumstances the small producer will be required to obtain separate certificate authorization.

Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) in its comments inquired as to whether a pipeline will be assured of recouping its cost of purchased gas if it pays the "going" field price to a small producer. Any question as to the propriety of the price paid by a pipeline to a small producer will be subject to review in certificate and rate cases involving that pipeline to make sure it is justified. The Commission has ample authority to inquire in these cases into the reasonableness of all items of operating expense, including the cost of purchased gas, and to disallow items of cost which are imprudent. We shall also require pipeline purchasers to file, within 60 days

of the execution thereof, every new contract or contract amendment for the purchase of natural gas from a small producer whose sale is regulated by the terms of this order.

The exemption proposed in the July 23 notice was applicable, *inter alia*, to sales made by a small producer to a large producer, but not to the resale of such gas by the large producer. A number of large producers argue that if sales by small producers to them are regulated by this order, there is no justification for not also applying consistent treatment to the resale of such gas. They warn that if large producers in these circumstances are not exempt they will be forced to sell gas purchased from small producers under new contracts in intrastate commerce in the future or to forego such small producer supplies, thus limiting the usefulness of their existing gathering and plant facilities. They also point out that if these small producer sales are made directly to an interstate pipeline purchaser under new contracts, it will be necessary for the purchaser to construct new facilities to take such gas which would duplicate existing facilities of large producers. With regard to existing sales, they claim that it would be discriminatory to prevent large producers from increasing their resale rates to account for higher rates paid to small producers.

We think it important to encourage large producers to continue to utilize their existing facilities for the resale in interstate commerce of gas purchased from small producers. For this reason we shall permit large producers with respect to the resale of gas sold to them by small producers pursuant to the subject exemption to file rate increases authorized by contract, thus permitting them to maintain the contract price differential between their purchase and resale prices. These filings shall be accepted, without refund obligation, as

long as the price differential is consistent with prevailing price differentials in the area and as long as the small producer prices for new gas are not unreasonably high, considering appropriate comparisons with highest contract prices for by large producers or the prevailing market price for intrastate sales in the same producing area. We shall require large producer purchasers, like pipeline purchasers, to file any new contracts or contract amendments with small producers.

Some of the large producers contend that royalty interests should be excluded specifically from any exemption granted to small producers.³ We disagree. The royalty interests stand in the same shoes as the working interest owners. Consequently, if a royalty interest relates to a small producer sale, such interest shall be exempt, but if it applies to any other sale it will not be exempt.

Consolidated Gas Supply Corporation (Consolidated) urges that small producers be exempt from compliance with Section 7(b) with respect to the abandonment of their small producer sales only when they have obtained the written consent of the pipeline purchaser to such abandonment. Consolidated points out that the vast majority of these are routine matters occurring either because of depletion of production or because continuance of the sale is uneconomic, and in these situations the purchaser routinely consents to the abandonment. But, Consolidated claims that in the rare situation where there is a dispute as to whether a small producer sale should be discontinued there

³ The question of this Commission's jurisdiction over royalty interests is now pending before the United States Court of Appeals for the District of Columbia in *Mobil Oil Corporation, et al. v. F.P.C.*, Nos. 23463, *et al.*

should be some Commission procedure available for the resolution of such dispute.

We think it important to retain control over all abandonments of jurisdictional sales. For this reason, small producers shall be required to comply with Section 7(b) of the Act with respect to every small producer sale exempted herein.* We shall also require purchasers to notify us of the cessation of deliveries by a small producer regulated by the terms of this order within 60 days of such cessation.

Austral Oil Company Incorporated (Austral) suggests that the definition of "affiliated producers" be clarified to make it clear that such term does not include small producers who have participated in joint ventures, nominee agreements and similar contractual arrangements in order to spread the risk of exploration and development and for operating convenience, unless such agreements otherwise establish the power to direct or cause the direction of the management policy of a person. The suggestion is a good one and we shall adopt it.

Tennessee has raised a question as to the applicability of the small producer exemption to a sale by a non-signatory small producer under a large producer's rate schedule. The exemption is applicable to such sale by a small producer.

The Commission proposed in the July 23 notice to waive the provisions of Section 154.63 of the Com-

* If a contract for an exempted sale of gas expires and is not extended or replaced by a new contract, the small producer must continue the sale of such gas unless the pipeline consents to abandonment or the producer obtains abandonment authorization. Moreover, in such circumstances the small producer is not entitled to collect any rate in excess of the highest rate permitted under the expired contract for the sale of such gas unless it files a notice of change in rate in accordance with Section 4(d) of the Act.

mission's Regulations to permit the tracking by pipeline purchasers of rate increases resulting from the exemption of small producers in those situations where a purchaser did not otherwise have the right to make a tracking filing. Consolidated claims that the collection of a tracking increase by a pipeline should not be subject to reduction and refund, as provided in the July 23 notice, inasmuch as the small producers will have no potential refund obligation with respect to their increased rates.

Small producers will have no refund obligations with respect to increased rates, if any, collected for sales regulated hereunder to pipelines, and, as a result, pipelines will receive no refunds from small producers to flow through. However, the pipeline's rates will be subject to reduction and refund, with respect to new small producer sales, but only as to that part of the rate which is unreasonably high considering appropriate comparisons with highest contract prices for sales by large producers or the prevailing market price for intrastate sales in the same producing area. Tracking increases to the extent they reflect small producer prices for new sales above the standard set forth above may be suspended, and if so, will be collected subject to reduction and refund. The issue will be resolved either in (1) a pipeline rate case or (2) a proceeding involving only the tracking increase. Pipelines must state the grounds for claiming that the rate at which gas is purchased from a small producer is required by the present or future public convenience and necessity. The Commission shall consider all relevant factors. See *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *Austral Oil Co. v. F.P.C.*, — F. 2d — (Fifth Circuit 1970, slip opinion dated March 19, 1970, No. 27492, et al.) In this manner the market mechanism in the light of regulation of pipeline rates will be protective of consumer interests.

Sales from small producers to large producers will likewise carry no refund obligations. However, if the resales by large producers to pipelines reflect new small producer sales at prices in excess of the previously discussed standard, the large producers' rates will be subject to suspension and refund.

Accordingly, the provisions of Section 154.63 are hereby waived to permit pipeline purchasers or pipelines purchasing from such pipeline purchasers to file rate increase applications to track small producer rate increases resulting from the exemption of small producers pursuant to the provisions of this order, provided that pipelines filing such an adjustment submit supporting schedules showing the computation and provided further that such filing may be made only if the small producer rate increases, or such increases together with other increases authorized for tracking by applicable Commission rules or orders, affect the pipeline's average cost of purchased gas by one mill or more. The Commission reserves the right to require a pipeline to file all information required by Section 154.63 if it deems such information to be necessary.

Many of the small producers urge us to relieve them of any potential refund obligations they have under increased rates collected in Section 4(e) rate suspension proceedings or under initial rates collected under temporary certificates issued pursuant to Section 7. These matters more properly should be disposed of in appropriate area proceedings after the refund obligations are determined.

In view of the foregoing, we shall revise Section 157.40 so as to establish a blanket certificate procedure for small producers, applicable to all small producer sales made nationwide under existing and

future contracts.* Small producers under this procedure shall be relieved of all filing requirements under the Natural Gas Act and the Commission's Regulations, except for the annual statement required by Section 154.104 of the Regulations and except for compliance with the abandonment provisions of Section 7(b) of the Act. By subsequent order we shall amend Section 250.11 to provide for a revised annual statement to be filed by small producers regulated hereunder commencing in 1972.

Producers who have received small producer certificates prior to the issuance of this order, or who have applied and qualify but have not yet received such a certificate, will not be required to file new applications seeking exemption, unless otherwise directed. Commission orders relating to those small producers who have applied and qualify for a certificate will be issued without any further action on the part of the producers involved. Such certificates, regardless of the date of issuance, will be effective as of 45 days from the date of issuance of this order. Similarly, all of those small producers who file applications for a blanket certificate within 45 days from the date of issuance of this order and who are entitled to coverage thereunder will also receive certificates which will be effective as of 45 days from the date of issuance of this order, regardless of the date of issuance of such certificate. With regard to those producers who have small producer certificates, the existing certificates, without further order of the Commission, shall be deemed to cover, as of 45 days from the issuance of this order, all small producer sales

* Notwithstanding the provisions of this order, a small producer may file for the minimum rate authorized by the Commission for any area.

of those producers which are exempt under the provisions of this order. The 45 day period will give the pipeline purchasers and their distribution customers time to track any increases resulting from this action.

We intend to review the prices established in new contracts or contract amendments relating to sales by small producers to assure the reasonableness of the rates charged by such producers pursuant to the action we are taking herein. In the event we determine that this approach is inimical to the interests of consumers, we shall take further action to protect the consumers.

The Commission finds:

(1) The notice and opportunity to participate in this rulemaking proceeding through the submission, in writing, of data, views, comments and suggestions are in accordance with all procedural requirements therefor as prescribed in Section 553, Title 5 of the United States Code.

(2) The action taken herein is necessary and appropriate for the administration of the Natural Gas Act.

(3) Since the modifications adopted herein to the amendments proposed in the notice of this proceeding are consistent with the prime purpose of the proposed rulemaking herein, further notice thereof is unnecessary.

The Commission, acting pursuant to the provisions of the Natural Gas Act, particularly Sections 4, 5, 7 and 16 thereof (52 Stat. 822, 823, 824, 825 and 830; 56 Stat. 83, 84; 61 Stat. 459; 76 Stat. 72, 15 U.S.C. 717e, 717d, 717f and 717o, orders:

(A) Parts 154 and 157 of Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations, are amended as follows:

1. Part 157 is amended by revising Section 157.40 to read:

§ 157.40 Exemption of small producers from certain filing requirements.

(a) Definitions.

(1) A "Small Producer" is an independent producer of natural gas as defined in § 154.91 of this chapter, who is not affiliated with a natural gas pipeline company and whose total jurisdictional sales on a nationwide basis, together with such sales of "affiliated producers" are not in excess of 10,000,000 Mcf at 14.65 psia during any calendar year. As used in this section, the term "jurisdictional sales" includes volumes of gas paid for but not taken under prepayment clauses or otherwise, and volumes of gas sold under other independent producer rate schedules in the proportion that the independent producer seeking to come within this section has an interest in such sales, but does not include sales made pursuant to percentage sales contracts.

(2) "Affiliated producers" are persons who, directly or indirectly, control, or are controlled by, or are under common control with, the applicant producer. Such control exists if the producer has the power to direct or cause the direction of, or as a matter of actual practice does direct, the management and policies of another producer, whether such power is exercised alone or through one or more intermediary companies, or pursuant to an agreement, and whether such power or practice is established through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, associated companies, relationship of blood or marriage, or any other direct or indirect means. For the further purposes of this section, the term "agreement" shall not include any agreement for the operation of a natural gas producing property or a plant processing natural gas or any joint venture, partnership, nominee, or other type of agreement pertaining

to the joint exploration for and development and operation of oil and gas properties, unless such agreement otherwise establishes the power of one producer to direct or cause the direction of the management and policy of another producer.

(3) "Small producer sales" are (i) sales by a small producer of his own interests under his own contracts; (ii) sales of all interests under a small producer's contract if producers not qualifying as small producers have interests which in the aggregate are no greater than 12½ percent; and (iii) sales of a small producer's interests under another producer's contract.

(b) Procedure for securing blanket small producer certificate.

(1) Small producers may apply for a blanket certificate to cover all existing and all future jurisdictional sales that do not raise the producer's total jurisdictional sales on a nationwide basis above 10,000,000 Mcf during any calendar year. Applications by these producers shall include the following information: (i) total jurisdictional sale on a nationwide basis for the year preceding the application; (ii) a list of outstanding certificates and rate schedules together with names and percentage of interest of other interest owners under such rate schedules; (iii) a list of outstanding rate schedules of others in which applicant owns an interest together with applicant's percentage of interest; and (iv) the names of all owners (stockholders, partners, joint venturers, etc.) of the applicant with an interest of 10 percent or more, their percentage of ownership in the applicant and in any other natural gas company, any positions such owners may hold with another natural gas company.

(2) An applicant for a blanket certificate who has no outstanding certificate issued by, or rate schedule filed with, this Commission for

the sale of natural gas shall include the following information in his application:

(i) a list of all contracts to sell natural gas in interstate commerce,

(ii) source of production, total rate and the annual volume delivery obligations of the producer under each such contract, together with names and percentage of interest of other interest owners under each such contract, and

(iii) a list of owners of the applicant with an interest of 10 percent or more, their percentage of ownership in the applicant and in any other natural gas company and any position such owners may hold with another natural gas company.

(3) The application shall contain the information required by the form set out in § 250.10 of this chapter. A conformed copy shall be served upon each of the applicant's purchasers.

(c) *Exemption under blanket certificate.* Small producers certificated hereunder shall be authorized to make small producer sales nationwide pursuant to existing and future contracts at the price specified in each such contract. However, no small producer shall be relieved from compliance with Section 7(b) of the Natural Gas Act with respect to any small producer sale exempted hereunder. The exemption authorized herein shall not apply to any jurisdictional sale made by a small producer where the gas reserves relating thereto were acquired by the purchase of developed reserves in place from a large producer.

(d) *Duration of the exemption.* The exemption authorized hereunder shall remain in effect for each small producer until the Commission on its own motion or on application terminates such certificate because the producer no longer qualifies as a small producer or fails to comply with the terms of the exemption. Upon such termination the producer will be required to file separate certificate applications and in-

dividual rate schedules for future sales but the exemption will still be effective as to those made under contracts dated prior to such termination.

(e) *Limitation on contractual provisions.* No Small Producer granted exemption under paragraph (c) above shall charge or collect any rate for a small producer sale of natural gas in excess of the applicable area just and reasonable base rate ceiling, or, where none is available, the applicable area guideline initial rate ceiling, where the contractual right to such rate is based upon any contractual provision which would not be permitted by subsections (a), (b), (b-1) and (c) of Section 154.93. For the purposes of this limitation, it shall make no difference whether the contract was executed prior to or subsequent to April 3, 1962.

(f) *Filings by large producers with respect to related resales.* A large producer may file for the price specified in its related contract for the resale of any natural gas sold to it by a small producer pursuant to the exemption authorized hereunder. Any such rate filing shall be accepted if the price differential between the purchase and resale prices does not exceed the prevailing price differential in the area, and if the small producer prices for new gas are not unreasonably high, considering appropriate comparisons with highest contract prices for sales by large producers or the prevailing market for intrastate sales in the same producing area.

(g) *Filing of contracts and notification of abandonment.* Pipeline purchasers and large producer purchasers shall file, within 60 days of the execution thereof, each new contract and each contract amendment dated on or after March 18, 1971, for the sale of natural gas to them by a small producer pursuant to the exemption authorized hereunder and shall notify

this Commission of the cessation of deliveries made by a small producer pursuant to the exemption authorized hereunder within 60 days of such cessation.

2. Part 154 is amended by revising paragraph (f) of § 154.91, § 154.104 and § 154.110 to read:

§ 154.91 Applicability.

(f) *Filings by certain non-signatories.* Where the operator and the signatory co-owners in a particular sale are exempt with respect to such sale pursuant to § 157.40, and where any non-signatory co-owner's interests are not covered by such exemption, such co-owner may file rate schedules, rate changes, or certificate applications with respect to such interests notwithstanding the provisions of paragraph (d) of this section.

§ 154.104 Annual statements by small producers.

Annual statements certifying to the matters enumerated in the form set out in § 250.11 of this chapter shall be filed by all producers, either individually or by groups, who have been exempted under the provisions of Section 157.40. The statements shall be submitted by April 1 of each year for the preceding calendar year.

§ 154.110 Applicability of §§ 154.92 through 154.102.

Sections 154.92 through 154.102 shall apply only to those persons specified in § 154.91 and shall not apply to small producer sales which are exempted under § 157.40 of this chapter."

(B) Part 250 of Subchapter G, Chapter I, Title 18 of the Code of Federal Regulations is amended by revising § 250.10 as follows:

The title of § 250.10 is revised to read:

§ 250.10 Application for small producer exemption.

The text of § 250.10 is revised by substituting therefor the form entitled "Application for Small Producer Exemption" as set out in Attachment A hereto.

(C) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

(D) The amendments adopted herein shall be effective 45 days from the date of issuance of this order.

By the Commission:

[SEAL]

KENNETH F. PLUMB,
Acting Secretary.

F 25a.19 APPLICATION FOR SMALL PRODUCER EXEMPTION (See § 157.40(b)(5))		
NOTE: Independent Producers of natural gas whose total jurisdictional sales on a nationwide basis for the preceding calendar year, combined with those of affiliated producers, were not in excess of \$5,000,000 may file the information called for in this form for a Small Producer Exemption to sell gas (in four copies). Include volume of gas sold for but not taken under prepayment clauses or otherwise, and volumes of gas sold under other independent producer rate schedules in the proportion that the independent producer seeking to come within Section 157.40 has an interest in such sales. Do not include sales made pursuant to percentage sales contracts. If insufficient space is given for a complete answer, continue the answer on the reverse side or on a separate sheet, noting the relevant number.		independent producer rate schedules in the proportion that the independent producer seeking to come within Section 157.40 has an interest in such sales. Do not include sales made pursuant to percentage sales contracts. If insufficient space is given for a complete answer, continue the answer on the reverse side or on a separate sheet, noting the relevant number.
1. NAME OF APPLICANT		2. STATE OF ORGANIZATION
3. LOCATION OF PRINCIPAL PLACE OF BUSINESS		4. TYPE OF ORGANIZATION (Corporation, partnership, joint venture, etc)
5. PERSON RESPONSIBLE FOR APPLICATION NAME AND TITLE		MAILING ADDRESS
6. TOTAL JURISDICTIONAL SALES VOLUMES AT _____ PERA FOR CALENDAR YEAR PRECEDING APPLICATION. (If more than one applicant is to be covered by this exemption, give the total jurisdictional sales volumes of each applicant separately.)		
7. LIST ALL CERTIFICATES PRESENTLY HELD BY DOCKET NUMBER AND LIST ALL CONTRACTS ON FILE WITH THE COMMISSION AS RATE SCHEDULES BY RATE SCHEDULE NAME AND NUMBER. INCLUDE IN SUCH LISTING APPLICANTS' INTERESTS IN GAS SALES OWNED BY OTHER PRODUCERS' CERTIFICATES AND RATE SCHEDULES. LIST ALL INTEREST OWNERS AND THE AMOUNT OF THEIR INTEREST FOR EACH SALE TO BE COVERED BY THIS EXEMPTION. (See reverse side for reporting)		
8. LIST ALL OWNERS OF MORE THAN 10 PERCENT INTEREST IN APPLICANT: (a) INDIVIDUAL NAME; (b) PERCENT OF OWNERSHIP		
9. LIST ALL INTEREST OWNED BY THE INDIVIDUALLY NAMED OWNERS IN OTHER NATURAL GAS COMPANIES: (a) INDIVIDUAL NAME; (b) COMPANY NAMES; (c) PERCENT OF APPLICANT OWNERSHIP.		
10. LIST FOR EACH OWNER THE POSITIONS HELD BY THESE INDIVIDUAL OWNERS IN APPLICANT COMPANY OR ANY OTHER NATURAL GAS COMPANY.		
11. IS APPLICANT OR ANY INDIVIDUAL OWNER LISTED, AFFILIATED WITH ANY PURCHASER OF JURISDICTIONAL GAS FROM APPLICANT? (If so list name of buyer and seller for each sale and nature of affiliation.)		
SIGNATURE	TITLE	DATE

SALES UNDER RATE SCHEDULE OF APPLICANT				
APPLICANT	DOCKET NUMBER	RATE SCHEDULE NUMBER	INTEREST OWNERSHIP UNDER RATE SCHEDULE	
			NAME	PERCENT INTEREST

APPLICANTS SALES UNDER RATE SCHEDULE OF OTHERS			
OTHER SELLER	DOCKET NUMBER	RATE SCHEDULE NUMBER	APPLICANTS PERCENT INTEREST IN RATE SCHEDULE

NOTE: Place an asterisk (*) after each co-owners name whose interest is not to be covered by the Small Producer Exemption applied for.

APPENDIX E

United States of America, Federal Power Commission

[18 CFR 250.11]

Before Commissioners: JOHN N. NASSIKAS, *Chairman*;
LAWRENCE J. O'CONNOR, Jr., and ALBERT B.
BROOKE, Jr.

Docket No. R-393

Exemption of Small Producers From Regulation

Order No. 428-A

ORDER REVISING ANNUAL STATEMENT

(Issued April 9, 1971)

The Commission on July 23, 1970 issued a notice of proposed rulemaking in this proceeding (35 F.R. 12220, July 30, 1970) proposing prospectively to exempt from regulation under the Natural Gas Act all existing and all future jurisdictional sales made by small producers as defined therein. Thereafter, the Commission in its Order No. 428 issued March 18, 1971¹ established a blanket certificate procedure for small producers applicable to all small producer sales made nationwide under existing and future contracts.

The Commission indicated in Order No. 428 that by subsequent order it would amend Section 250.11 to

¹ 36 F.R. 5598, March 25, 1971.

provide for a revised annual statement to be filed commencing in 1972 by small producers operating under blanket certificates issued pursuant to that general order. The annual statement to be submitted by small producers has been expanded to show, in addition to the total jurisdictional sales volume, a breakdown of such sales by area, volume, purchaser and price.

The Commission finds:

(1) The notice and opportunity to participate in this rulemaking proceeding through the submission, in writing, of data, views, comments and suggestions are in accordance with all procedural requirements therefor as prescribed in Section 553, Title 5 of the United States Code.

(2) The action taken herein is necessary and appropriate for the administration of the Natural Gas Act.

(3) Since the modification adopted herein to the amendment proposed in the notice of this proceeding are consistent with the prime purpose of the proposed rulemaking herein, further notice thereof is unnecessary.

The Commission, acting pursuant to the provisions of the Natural Gas Act, particularly Sections 4, 5, 7 and 16 thereof (52 Stat. 822, 823, 824, 825 and 830; 56 Stat. 83, 84; 61 Stat. 459; 76 Stat. 72, 15 U.S.C. 717c, 717d, 717f and 717o, *orders*:

(A) Part 250 of Subchapter G, Chapter I, Title 18 of the Code of Federal Regulations is amended by revising § 250.11 as follows:

The title of § 250.11 is revised to read:

§ 250.11 Annual statement for independent producers holding small producer exemptions.

The text of § 250.11 is revised by substituting therefor the form entitled "Annual statement for independent producers holding small producer exemptions" as set out in Attachment A hereto.

(B) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

(C) The amendment adopted herein shall be effective 30 days from the date of issuance of this order.

By the Commission:

[SEAL]

KENNETH F. PLUMB,
Acting Secretary.

§ 250.11 ANNUAL STATEMENT FOR INDEPENDENT PRODUCERS HOLDING SMALL PRODUCERS EXEMPTIONS
(See § 157.40 of this chapter)

I hereby certify that total sales subject to the jurisdiction of the Federal Power Commission made by the undersigned and its affiliates for the calendar year 19__ were _____ Mcf at 14.65 psia. The pertinent information relating to each of these jurisdictional sales is as follows:

Area

Purchaser

Volume

Price

(Name of Small Producer)

(Signed)

(Representative Capacity)

(Docket No.)

APPENDIX F

United States of America, Federal Power Commission

[18 CFR 157.39]

Before Commissioners: JOHN N. NASSIKAS, Chairman;
LAWRENCE J. O'CONNOR, Jr., JOHN A. CARVER, Jr.,
ALBERT B. BROOKE, Jr., and PINKNEY WALKER

Docket No. R-393

Exemption of Small Producers From Regulation

Order No. 428-B

ORDER MODIFYING ORDER NO. 428 AND DENYING
APPLICATIONS FOR REHEARING

(Issued July 15, 1971)

The Commission in Order No. 428 issued March 18, 1971 (36 F.R. 5598, March 25, 1971) in the above-entitled proceeding established a blanket certificate procedure for small producers. Small producers certificated thereunder shall be authorized to make small producer sales nationwide pursuant to existing and future contracts at the price specified in each such contract.

Applications for rehearing of Order No. 428 were filed by James M. Forgotson, Sr. (Forgotson) on March 31, 1971, Mobil Oil Corporation (Mobil) on April 14, 1971, Texaco Inc. (Texaco) on April 15, 1971, Phillips Petroleum Company (Phillips) on April 19, 1971, Warren Petroleum Corporation (War-

ren) on April 16, 1971, Independent Natural Gas Association of America (INGAA) on April 16, 1971, Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska) on April 19, 1971, Consolidated Gas Supply Corporation (Consolidated) on April 19, 1971, El Paso Natural Gas Company (El Paso) on April 19, 1971, Tennessee Gas Pipeline Company, A Division of Tenneco Inc. (Tennessee) on April 16, 1971, and the Public Service Commission of the State of New York (New York) on April 19, 1971. By order issued April 29, 1971, the Commission provided for joint consideration of these applications for rehearing.

Some of the large producers claim that Order No. 428 casts a burden on them with respect to purchases from small producers which goes beyond the scope of the proposal in the notice issued July 23, 1970 (35 F.R. 12220, July 30, 1970) in this proceeding and is therefore invalid under Section 4 of the Administrative Procedure Act (5 U.S.C. 553).

In the July 23 notice the Commission proposed to apply Section 157.40 of its Regulations, as revised therein, to sales made by a small producer to a large producer, but not to the resale of such gas by a large producer. Under that approach resales by large producers might have been limited to the rate ceiling and any moratorium prescribed by the Commission in each area, but the notice also specifically directed attention to the possibility of a problem in this regard and invited comments with respect thereto.

As a result of the arguments made by certain large producers in thier comments that resales of gas purchased from small producers are entitled to the same treatment as small producer sales, the Commission in Order No. 428 provided relief to the large producers by permitting them to file for contractually authorized rate increases with respect to such resales, regardless

of the ceiling or moratorium which would otherwise be applicable thereto. This modification alleviated some of the problems for large producers inherent in the original proposal, while at the same time providing adequate protection for consumers against unreasonable rates by setting a limitation on the rate level which would be accepted without refund obligation. Our actions, we believe, are in full compliance with the Administrative Procedure Act.

Warren contends it will be faced with the problem of purchasing gas from small producers which must be resold under old contracts containing prices that are not competitive with existing market values.* The order, according to Warren, places a large producer at a disadvantage since a pipeline may negotiate any price at the risk only of such price being found unreasonably high. Warren suggests elimination of this problem by allowing the large producer to pass on the additional cost incurred in the purchase of gas from a small producer under a new contract and to maintain its sales margin, irrespective of any price limitation in its resale contract. We have authority to remove contract price limitations under the *Sierra* doctrine.¹ But, the *Sierra* situation is not presented here. There is, however, nothing to preclude a large producer from renegotiating its resale contract if the purchaser is willing to do so.

Phillips states that even if a large producer is able to negotiate a new resale contract, it is still at a bargaining disadvantage with a pipeline because a pipeline may commence deliveries under budget-type

*Phillips makes a similar argument in its application for rehearing, and in an amendment to such application for rehearing filed untimely on May 3, 1971, Phillips refers to a specific situation where it is unable to compete with a pipeline purchaser for a small producer sale.

¹ *F.P.C. v. Sierra Pacific Power Co.*, 350 U.S. 348.

arrangements as soon as a contract is negotiated with a small producer, while a large producer must wait for Commission action on its certificate application to resell gas under a new contract. Phillips urges the Commission to permit large producers to commence deliveries immediately and thereafter to advise the Commission of the purchase from a small producer and the resale of such gas to a pipeline pending action on its certificate application.

We think it desirable to help large producers maintain their competitive position with pipeline purchasers with respect to purchases of gas under new small producer contracts. Large producers, however, should be required to file a certificate application before commencing the resale of gas under a new contract. Consequently, we shall authorize large producers to resell gas purchased from small producers at any time after they have filed a certificate application pending action thereon, but any amounts collected for such resales in excess of the rate authorized in the certificate case shall be subject to refund with interest.

Mobil claims that Order No. 428 is not clear as to whether the small producer will have a refund obligation on deliveries subsequent to March 18, 1971, where its rate was in effect subject to refund prior to that date or where an above ceiling increase is filed subsequent to that date. The blanket certificate authorized in our order will become effective as of May 2, 1971, at the earliest. Any refund obligation for the period prior to the effective date of a small producer's blanket certificate will be disposed of in the appropriate area proceeding. Consequently, in both of the situations referred to by Mobil, the small producer's rate will be subject to direct Commission regulation at least until May 2, 1971. However, on and

after the effective date of its blanket certificate, the small producer is authorized to collect its contract rate for an existing sale without refund obligation, regardless of the rate on file for such sale prior to the effective date of its blanket certificate and without regard to whether such rate previously was being collected subject to refund.

Suggestions have been made to require small producers to inform their co-owners and purchasers of their status as a small producer. In Order No. 428 small producers were required to serve their purchasers with copies of their applications. Aside from this requirement, we believe large producers and pipeline purchasers are in a better position to acquire and maintain this information as they have been required to do in the past in the Permian, Southern Louisiana and the Hugoton-Anadarko areas. We shall provide some assistance in this regard by appending to this order a list of all small producers who have received small producer certificates or who have applications pending as of April 30, 1971.² From time to time we shall update this list.

Small producers who receive blanket certificate authorization are required under Section 157.40(c) to obtain abandonment authorization under Section 7(b) of the Natural Gas Act for any sale made pursuant to Section 157.40. This requirement applies to sales to either large producers or pipelines. It also applies upon the expiration of a new or existing sales contract which provides for termination after a given number of years as well as prior to the expiration of a contract. Nor does it make any difference whether the purchaser consents to the abandonment. Authorization

² The list does not include small producers operating in the Appalachian and Illinois Basin areas.

is required in any event. Footnote 4 relating to abandonment authorization on page 7 of Order No. 428 (p. 5600 of Federal Register Document 71-4044 published at pages 5598-5602 in the issue dated March 25, 1971) is confusing on this latter point and inconsistent with the text on that same page. The words "the pipeline consents to abandonment or" should be deleted from line 4 of that footnote so as to clarify the matter. We shall also modify Section 157.39 of the Regulations (which now provides that Sections 157.23 through 157.30 do not apply to those independent producers who are subject to Section 157.40) to accord with the provisions of Order No. 428. More specifically, we shall make the abandonment provisions of Section 157.30 applicable to small producers covered by Section 157.40.

Consolidated claims there is some confusion as to whether those small producers in the Appalachian and Illinois Basin Areas who automatically received small producer certificates pursuant to Order No. 411 are required to apply for blanket certificates under the new provisions of Section 157.40. They are not so required. As we indicated in Order No. 428, p. 10, small producer certificates previously issued to small producers are deemed to cover as of May 2, 1971 all sales covered under the provisions of Order No. 428. However, any producer initiating service in the Appalachian and Illinois Basin Areas after May 2, 1971, the effective date of Order No. 428, and qualifying as a small producer would be required to file an application for a blanket certificate.

Consolidated also questions whether small producers in the Appalachian and Illinois Basin Areas who have been receiving the minimum rate, without the necessity of filing therefor, in accordance with Order No.

411, in lieu of a lower contract rate, are required as a result of footnote 5 on page 9 of Order No. 428 to make a filing for the minimum rate in that area. Those small producers who have been collecting the minimum rate in that area are not required to make any filing. The purpose of the footnote was not to require a filing where none was previously required, but to make it clear that a small producer would be entitled to the minimum rate authorized by the Commission in each area even though it had a blanket certificate.

New York objects to the provisions of Section 157.40(d) pursuant to which a small producer who exceeds the 10 million Mef annual limitation retains his status as a small producer until the Commission takes action. New York claims the slippage will be severe. They argue that, as a minimum, the Commission should provide for an automatic termination of the blanket certificate as of the time the cutoff figure is reached. This particular provision is the same as that adopted by the Commission in Order No. 308 after the issuance of the *Permian* decision in Opinion No. 468. There have been no problems under this provision thus far. Indeed, there has been only one instance where a small producer certificate was terminated. We also think it better to determine the appropriate cutoff date when action is taken to terminate the blanket certificate. In our view the use of the automatic cutoff date suggested by New York might cause serious problems for a small producer. Moreover, we think the cutoff date should be the date (April 1) small producers are required each year to report the volume of jurisdictional sales made in the prior year.

Forgotson contends the Commission lacks jurisdiction to issue Order No. 428. This position is based on his contention that the Supreme Court's determina-

tion in the *Phillips* case³ that this Commission has jurisdiction over sales for resale in interstate commerce by independent producers, while constitutional then, is no longer constitutional.

Forgotson's position is unsound. The Supreme Court, as recently as 1968 in the *Permian Basin Area Rate Cases*, 390 U.S. 747, by its affirmance of the just and reasonable rates determined by the Commission in Opinion Nos. 468 and 468-A reaffirmed by implication, at least, its jurisdictional holding in the *Phillips* case.

It has also been asserted that Order No. 428 is defective because the notice did not advise pipelines that their purchased gas costs relating to new small producer sales would be subject to review.⁴ Implicit in this argument is the assumption that, in the absence of these provisions in our order, pipelines would be free to make purchases from small producers under new contracts at imprudent prices. With this assumption, we disagree. Ever since the passage of the Natural Gas Act in 1938, pipelines as regulated public utilities have been permitted to include in their cost of service only those operating expenses, including the cost of purchased gas, which are reasonable. While our order placed emphasis on that duty, it did not effectuate any basic change in the pipelines' obligations in this regard. These obligations would exist even if nothing had been said in the order.

Similar objections to the Commission's standard for limiting a pipeline's reduction and refund obligation

³ *Phillips Petroleum Co. v. State of Wisconsin*, 347 U.S. 672 (1954).

⁴ The term "new small producer sale" includes, *inter alia*, gas sold by a small producer pursuant to a contract dated on or after March 18, 1971 which replaces an expired contract or pursuant to a contract amendment dated on or after March 18, 1971, modifying the terms of a contract dated prior to that date.

under a tracking increase are also without merit. The Commission in the July 23 notice proposed to allow pipeline purchasers to file tracking increases of rate increases resulting from the issuance of blanket certificates, but the collection of these tracking increases was to be subject to reduction and refund. In response to Consolidated's claim that the collection should not be so conditioned, the Commission in Order No. 428 modified the original proposal so as to limit the reduction and refund obligation of tracking increases to those which reflect small producer prices for new sales above the standard set forth therein.⁵ The standard also provides pipelines with a more concrete guide for their future actions than would exist in the absence thereof. Simply put, the Commission wanted the pipelines to know in advance the boundaries within which they could freely contract with small producers.

Both INGAA and Tennessee object to the provision which limits tracking increase filings to those situations where small producer rate increases, or such increases together with other increases authorized for tracking, affect a pipeline's cost of purchased gas by one mill or more. INGAA urges that a minimum dollar amount be fixed for each company, or, alternatively that the adjustment amount be reduced to one-tenth mill where a pipeline designs its rates to that tolerance. While Tennessee makes no specific recommendation, it does claim that the present limitation is unreasonable for large pipelines. To illustrate, it states that under the present limitation it will be required to absorb all small producer increases until it experiences an overall annual increase of approxi-

⁵ There is no reduction or refund obligation with respect to increased purchased gas costs relating to rate increases authorized in existing small producer contracts.

mately \$1,200,000 in its purchased gas costs. In view of its many suppliers, its frequent changes in rates and changes in purchase patterns, the limitation imposed is of minor significance. In addition, any reduction in the one mill limitation would substantially increase the number of tracking filings made by a pipeline during the course of a year to the detriment of the pipeline's customers. Consequently we shall retain the one mill limitation.

Tennessee also inquires as to a pipeline's obligation in a situation where the operator of a producing property is a small producer who has a blanket certificate, but one of the non-signatory working interest is a large producer with an interest above 12½%. The large producer in such circumstances is required to obtain certificate authorization under Section 154.91 of the Regulations and to file the small producer's contract as its own as well as its operating agreement with the small producer. If the large producer does not obtain certificate authorization, he is not authorized to make any jurisdictional sales.

In Order No. 428 we indicated that the blanket certificate of a small producer would apply to a sale by a non-signatory small producer under a large producer's rate schedule. Tennessee asserts, however, that if a pipeline pays on the basis of the large producer's billing, it should not later be subjected to claims that the non-signatory small producer who has been selling under the large producer's rate schedule is entitled to a higher rate. For this type of sale a small producer will not be permitted to collect a higher rate than the rate in effect under the large producer's rate schedule for any period prior to the date it notifies the large producer and the pipeline purchaser of its right to make the sale under its blanket certificate and the rate

applicable thereto. However, a small producer who has filed for a small producer or blanket certificate prior to the issuance of this order shall have 30 days from the date of issuance of this order within which to make the notification required herein, and if it does so, such notification shall be effective as of the effective date of its blanket certificate.

Tennessee contends that the Commission's action of providing that the blanket certificate would be effective as of May 2, 1971 if a small producer had filed an application prior to the issuance of Order No. 428 or if it files one on or before May 2, 1971, regardless of the date of Commission action, is illegal because it would result in retroactive increases for small producers. Tennessee also claims the procedure is unfair because there is no way a pipeline can track retroactively the effect of this obligation.

The purpose of our action was to assure the small producer that its effective date for exemption would not depend on the happenstance of the date of issuance of a blanket certificate. Nor is there any retroactivity involved since the filing must be made on or before the effective date. The fact that Commission action will not be taken until after the date of filing does not make the action taken illegal. Such action is similar to the action taken by the Commission on an increased rate filing when it permits such filing to become effective as of the date of filing. Furthermore, there is nothing in Order No. 428 to preclude a pipeline in these circumstances from tracking an increase of this nature.

El Paso has suggested an alternative procedure to the one adopted by us pursuant to which the Commission would take action within 60 days of the submittal of a new small producer contract by a pipeline. Under

this approach the Commission would approve or disapprove the rate proposed, or, alternatively, indicate the proper rate level. During the 60 day review period the small producer would have the right to initiate deliveries without refund obligation and would be free after Commission action to terminate deliveries if it so desired.

The proposal does not go far enough. We want to facilitate the entry of the small producer into the interstate market and to assure the small producer that when he enters into a new contract, the provisions of that contract will not be subject to change. This can best be accomplished within the framework of the procedure we have adopted in Order No. 428.

Nor do we adopt El Paso's request that the first blanket certificates authorized under Order No. 428 be effective as of the first day of a calendar month, in lieu of May 2, 1971, to avoid costly and burdensome procedures in segregating purchases. We are reluctant at this stage to move the effective date back to May 1 and it would be inequitable to the small producers to push it forward to June 1. Moreover, the problems alluded to by El Paso are the same as those which arise each month when a producer places a higher rate into effect, subject to refund.

New York in its application for rehearing sought a stay of Order No. 428 until 30 days after the Commission's action on rehearing based on the assumption that the Commission might rescind or substantially modify that order, but that it might not do so until after May 2, 1971, the effective date of the order. With minor modifications, Order No. 428 remains intact. There is thus no justification for granting a stay now.

A number of other matters have come to our attention which warrant some discussion here. Small pro-

ducer certificates issued pursuant to Order No. 428 will be effective as of May 2, 1971 if an application therefor was filed on or before May 3, 1971,* and as of the date of filing if an application is filed subsequent to May 31, 1971. Following the filing of an application, temporary authorization is not necessary for a small producer to commence new jurisdictional sales or to collect the contract rate for existing or new sales as of May 2, 1971, or the date of filing the application, whichever is applicable. The blanket certificate, when issued, will provide all of the necessary authorization.

As provided in Order No. 428, those producers who received small producer certificates under the procedure in effect prior to the establishment of the new procedure in Order No. 428 are deemed as of May 2, 1971, without further order of the Commission, to have blanket certificate authorization under Section 157.40 (c) as now constituted.

In accordance with Order No. 428, small producers under favored-nation or other indefinite pricing clauses may charge the applicable area just and reasonable ceiling. The vintage of the gas involved will determine whether a small producer is entitled to the new or old gas ceiling. Where no just and reasonable determination is available, a small producer may charge the applicable area guideline initial rate ceiling, regardless of the vintage involved.

Finally, the blanket certificate authorization is applicable to jurisdictional sales made by a small producer from gas reserves acquired prior to the issuance of Order No. 428 by the purchase of developed reserves in place from a large producer. The problem sought to be solved in Section 157.40(c) by the exclusion from

* Inasmuch as the filing deadline fell on May 2, a Sunday, it was extended to May 3 pursuant to Section 1.13 of the Commission's Rules of Practice and Procedure.

Market authorization of sales from certain gas reserves has no applicability to previously acquired reserves. However, for acquisitions of developed reserves in place made on or after the issuance of Order No. 428, a small producer must apply for separate certificate authorization for jurisdictional sales relating thereto regardless of whether the large producer who sold the reserves in place retained any rights or reversionary interest in the properties involved.

The Commission finds:

(1) The applications for rehearing set forth no further facts or principles of law which were not fully considered in Order No. 428 (36 F.R. 5598, March 25, 1971), or which, having now been considered, warrant any modification of that order, except as hereinafter provided.

(2) The correction of footnote 4 in Order No. 428 (36 F.R. 5598 at 5600, March 25, 1971) and the revision of Section 157.39 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.39) prescribed in ordering paragraphs (B) and (C), *infra*, constitute a clarification and interpretation of Order No. 428, an existing order in this proceeding which was adopted in compliance with the requirements of 5 U.S.C. 553 after notice and opportunity to submit written comments which were received and considered by the Commission. Accordingly, further compliance with the notice, public procedure and effective date requirements of 5 U.S.C. 553 is unnecessary.

(3) The correction of footnote 4 in Order No. 428 (36 F.R. 5598 at 5600, March 25, 1971) and the revision of Section 157.39 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.39) prescribed in ordering paragraphs (B) and (C), *infra*, are necessary and appropriate for carrying out the provisions of the Natural Gas Act.

(4) Since the addition of paragraph (h) to Section 157.40 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.40) prescribed in ordering paragraph (D), *infra*, is consistent with the prime purpose of the proposed rulemaking herein, further notice thereof is unnecessary.

The Commission, acting pursuant to the provisions of the Natural Gas Act, particularly Sections 4, 5, 7, 16 and 19, 52 Stat. 822, 823, 824, 825, 830 and 831; 56 Stat. 83, 84; 61 Stat. 459; 15 U.S.C. 717c, 717d, 717f, 717o, 717r,

orders:

(A) The applications for rehearing filed with respect to Order No. 428 (36 F.R. 5598, March 25, 1971) and New York's request for a stay are denied.

(B) Federal Register Document 71-4044 published at pp. 5598-5602, Vol. 36, of the issue dated Thursday, March 25, 1971, is corrected by deleting the words "the pipeline consents to abandonment or" in lines 4-5 of footnote 4, which footnote appears on p. 5600 at the bottom of the left-hand column.

(C) Part 157 of Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations is amended by revising Section 157.39 to read:

§ 157.39 Applicability of §§ 157.23 through 157.30

Sections 157.23 through 157.30 shall be applicable to independent producers as defined in § 154.91 of this Chapter, but, with the exception of § 157.30, shall not apply to those independent producers who are subject to §157.40.

(D) Part 157 of Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations is amended by adding paragraph (h) to Section 157.40, as follows:

§ 157.40 Exemption of small producers from certain filing requirements.

* * * * *

(h) *Resale authorization for large producer.*

A large producer who has filed on or after _____, 1971, an application for a certificate of public convenience and necessity for the resale of natural gas purchased from a small producer authorized to sell such gas pursuant to the blanket certificate provisions in paragraph (c) above may resell such gas at any time after the filing of its certificate application pending final Commission action thereon. Any amounts collected by a large producer for resales made pursuant to this paragraph in excess of the rate finally determined to be required by the public convenience and necessity for such resales shall be subject to refund with interest at 7 percent per annum.

(E) This order shall be effective upon issuance.

(F) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

By the Commission:

[SEAL]

KENNETH F. PLUMB,
Secretary.

APPENDIX

Small Producer Certificates, April 30, 1971

<i>Seller</i>	<i>Docket</i>	<i>Order Issuing CS Cert.*</i>	<i>Other</i>
A. I. K. Ltd.	CS71-108		
A. I. K. Ltd. No. 2	CS71-106		
A-L Ltd.	CS71-120		
Abell, George T.	CS66-109	06-14-66	
Abercrombie, A. L.	CS71-71		
Abercrombie, J. S. Mineral Company, Inc.	CS71-378		
Achers, D. E.	CS66-6		Terminated 11-29-67
Arma Oil Corporation	CS71-204		
Ada Oil Company	CS66-78	06-14-66	
Adams, K. S., Jr.	CS66-17	06-14-66	
Adams, K. S. Jr. d/b/a Rio Hondo Oil Company	CS66-90	06-14-66	
Adams & McGabey	CS71-220		
Adams Production Company	CS66-79	06-14-66	Terminated 04-02-69
Adams, R. W. & Son	CS71-219		
Adobe Corporation	CS71-250		
Adobe Ltd. #1	CS69-73	09-16-69	
Adobe Ltd. #2	CS69-74	09-16-69	
Adobe Investment Corp.	CS69-75	09-16-69	
Adobe Oil Company	CS67-2	09-27-66	
Alkman Brothers	CS71 109		

*A blank space in the "Order Issuing CS Cert." column indicates "certificate not issued as of April 30, 1971".

Small Producer Certificates, April 30, 1971—Continued

Seller	Deckel	Order Issuing CS Cert.*	Other
Alkman Bros., Corporation	CS71-107		
Alkman, Claude E.	CS66-63	07-20-66	
Akin, H. D.	CS71-327		
Aladdin Production Co	CS69-23		
Alamo Petroleum Company	CS71-361		
Allbritton, Carolyn E.	CS71-364		
Allen, R. C.	CS71-215		
Alliance Oil & Gas Company	CS71-79		
Alpine Oil Company	CS71-165	02-17-71	
Amarez, Inc.	CS71-92		
Ambrose, Z. C.	CS66-32	07-20-66	
American Gas Engineering, Inc.	CS71-227		
American Trading & Production Corp.	CS66-76	04-22-66	
Americana Oil & Gas Properties of Texas Inc.	CS66-65		Returned 07-23-68
Amini Oil Corporation (Formerly K. K. Amini)	CS68-1	08-30-67	
Anchor Production Co.	CS71-394		
Anderson, Bruce	CS71-19	02-05-71	
Anderson, E. D.	CS71-4	09-21-70	
Anderson, E. T.	CS68-7	11-29-67	
Anderson, J. S., Jr.	CS70-3	09-16-69	
Anderson Petroleum	CS71-121		
An-Son Corporation	CS69-77	09-08-69	
Aniwell, Morris R.	CS66-27	04-06-66	
Apco Oil Corporation	CS66-1	04-11-66	
Appleby, M. P., Jr.	CS70-1	09-16-69	
Appleman, Nathan	CS71-60		
Aquitane Oil Corporation	CS71-291		
" " "	CS71-543		
Archer and Smith	CS71-373		
Ard Drilling Company	CS66-118	07-20-66	
Ares, A. L.	CS67-31	03-13-67	
Ares, Sam D.	CS66-46	04-08-66	
Arcus Production Company	CS66-22	09-14-66	
(Formerly First National Bank in Dallas, as Trustee for Paul P. and Clara T. Scott)			
Armstrong, Robert C.	CS71-146		
Arnold, Daniel C.	CS71-423		
Arroya Resources Inc.	CS71-368		
Ashmun & Hilliard	CS66-120	06-07-66	
Atkinson, Dora C.	CS71-532		
Avance Oil & Gas Company, Inc.	CS70-29	02-02-70	
Axelrod, Beverly M.	CS71-133		
Axelrod, Kenneth M.	CS71-132		
Mamie Axelrod Estate	CS71-134		
Aycock, William P. & Hillin, Robert K., d/b/a Aycock & Hillin	CS69-43	06-04-69	
Aztec Gas Systems, Inc.	CS70-20	11-10-69	
B B M Drilling Company	CS67-51		Returned 06-22-67
B H & D Company	CS67-54	07-20-67	
HTA Oil Producers	CS69-12	03-06-69	
BWP, Inc.	CS67-91	07-07-67	
Bakke, W. E.	CS66-11	07-20-66	
Bakke, W. E.	CS71-18		
d/b/a W. E. Bakke Oil Company			
Baldrige, B.	CS71-188		
Bankers Trust Company Trustee	CS66-4	06-11-66	
Barker, Shannon	CS71-153		
Barnes, Florence H. Trustee	CS70-11	10-09-69	

See footnote on p. 65a.

Small Producer Certificates, April 30, 1971—Continued

Seller	Debit	Order Issuing CS Cert.*	Other
Burns, J. C. Oil Company	CS67-1	09-27-66	
Burnett, Gladys Lucille	CS67-11	12-20-66	
Burnett Oil Company	CS71-210		
Burnett, Thomas D.	CS67-12	12-20-66	
Burnett-Serio Exploration Company	CS70-35	07-20-70	
Burnhart, Paul F.	CS66-77	10-25-66	
Burnhart, Paul F. Trustee	CS67-62	06-22-67	
Burch-Foster Corporation	CS66-48	06-17-68	
Bur, H. W. & Sons Inc.	CS71-437		
Brylen, Robert L.	CS71-413		
Burch, R. G. Mrs.	CS67-74	06-07-67	
Bran, R. J.	CS71-222		
" " "	CS71-309		
Burd, Doris A.	CS66-75	07-20-66	
Buder, Phillip F.	CS66-31		Rejected 01-07-66
Beyer, Erol	CS70-21	11-10-69	
Bel Oil Corporation	CS71-616		
Bel Petroleum Company	CS66-45	04-19-68	
Belgian Oil Company	CS71-418		
Benedum-Trees Oil Company	CS66-18	07-20-66	
Beneficial Oil Company	CS71-369		
Bensh, Bess Jo	CS71-494		
Millie Bennett Estate	CS71-341		
Bettis, Boyle & Stovall	CS71-127	01-18-71	
Bickel, Ross R., Trustee	CS66-136	06-11-66	
Bistliff, David C.	CS71-422		
Blackrock Oil Company	CS70-49	06-24-70	
Blackney, Dorothy Hewitt, et al:	CS71-454		
Blanks, W. C.	CS71-540		
Blocksw Company	CS71-304		
Boyle, Hal	CS66-45	07-20-66	
Boyle Farms, Inc.	CS66-4	04-06-66	
Bond, Roland S.	CS71-106		
Bouray Oil Company	CS71-461		
Bown, Sam	CS67-33	04-04-67	
Boury, Oscar Estate of (Formerly MEB Oil Company)	CS66-5	06-26-67	
Bowers Drilling Company, Inc.	CS71-51		
Boyd, Walter K., Jr.	CS60-67	09-16-69	
Boyle, W. Stewart	CS67-7	11-14-66	Will be Cancelled
Brack, Ben F.	CS71-73		
" " "	CS71-274		
Bradley, Albert	CS66-5		Dismissed 11-20-67
The Bradley Producing Corporation	CS71-23		
Brady, Austin	CS71-167		
Ab's Brady Compressing Company			
Brennan, M. W.	CS67-36	03-13-67	
Bright & Schiff	CS71-70		
Britain, B. M.	CS71-24		
Brukw, Edwina S.	CS66-9	11-20-67	
Brouley, Jane P.	CS71-600		
Brouley, W. K.	CS71-488		
Brown Oil Corporation	CS67-99	06-30-67	
Brookhaven Oil Company	CS71-293		
Bucks Gas Corporation	CS66-73		Withdrawn 07-14-66

See footnote on p. 65a.

Small Producer Certificates, April 30, 1971—Continued

Seller	Docket	Order Issued CS Cert.*	Other
Brooks Gas Corporation	CS86-80		
" " "	CS87-47		Withdrawn 07-14-66
Brown, C. Arnold OEA	CS71-412		Withdrawn 10-01-68
Brown, Elizabeth M.	CS87-68	05-23-67	
Brown & Key, Inc.	CS86-36	03-29-66	
Brown, Robert T.	CS71-5	00-21-70	
Bruns, H. D.	CS71-493		
Buckles, George L.	CS86-119	07-20-66	
Burdette, Hugh	CS71-216		
Burdette, Hugh & H. L. Green Trustee	CS71-217		
Burk Gas Corporation	CS71-7	11-04-70	
Burleson, Lewis B. & Huff, Jack	CS86-36	04-15-60	
Burlington Bank and Trust Company	CS71-340		
Burnett Corporation	CS71-86		
Burnett, H. N.	CS71-87		
Burns, John J.	CS86-10		Dismissed 11-20-67
Burns Trust #2	CS71-519		
Burns Trust #3 & 1	CS71-518		
Buxton, F. M.	CS71-130		
Byrom, W. K.	CS86-37	04-08-66	
"	CS71-334		
C. W. Inc.	CS71-271		
CRA, Inc.	CS87-76	07-07-67	Terminated 06-21-69
Cactus Drilling Company	CS86-54	04-06-60	
Cahill, John T.	CS86-11		Dismissed 11-20-67
Cahoon, Frank Kell	CS89-61	10-15-60	
Calco, Inc.	CS86-47	04-18-68	
California Time Petroleum, Inc.	CS71-141	02-06-71	
Cal-Ray Petroleum Corp.	CS71-323		
Calvert Exploration Company	CS71-51		
Calvert Western Exploration Co.	CS70-41	07-07-70	
Campbell, Donald C.	CS89-66	09-16-60	
Campbell, E. R.	CS71-306		
Campbell, Pearl G.	CS71-218		
Cantwell, Dallas	CS89-76	00-16-60	
Carlson, Everett J., Oper.	CS71-380		
Carr, W. P.	CS71-397		
Carter, R. W.	CS86-32	12-15-67	
Caruthers, John D.	CS71-319		
Caruthers Operating Company Inc. OEA	CS71-338		
Caruthers, Dr. Robert Mack	CS71-336		
Caruthers, Veva O.	CS71-337		
Cass, Frank W.	CS86-41	04-02-66	
Cassidy, Thomas (Mrs.)	CS86-136	06-11-66	
Caulkins, George P., Jr.	CS71-368		
Cellhardt, M. A./S. J.	CS71-410		
Chalmers, David B.	CS89-96	09-16-60	
Chambers & Kennedy	CS71-41	03-13-67	
Champlin Exploration Inc.	CS71-251		
Champlin, H. H., et al.	CS71-352		
Chandler & Associates Inc., et al	CS71-350		
Chandler-Simpson Inc., et al.	CS71-353		
Chancellor—Western Oil & Development Company	CS71-206		
Chapell, Don O.	CS86-49	06-06-68	
Chapman & Poland	CS86-44	04-08-66	Terminated 07-07-69
Charm Oil Company	CS86-29	06-14-66	
" " "	CS71-303		

See footnote on p. 65a.

Small Producer Certificates, April 30, 1971—Continued

Seller	Docket	Order Issuing CS Cert.*	Other
Cherry, A. W. Trust	CS86-44	06-05-68	
Cherry, Estate of J. Blair	CS71-253		
" " " "	CS71-426		
Childers Oil Company	CS71-201		
Childers, Jay Oil Company	CS71-202		
Christmann, John J.	CS67-60	07-28-67	
Circo Exploration Inc.	CS71-550		
Clark, E. B.	CS66-136	05-11-66	
Clark Fuel Producing Co.	CS71-438		
Clark Oil Producing Company	CS71-447		
Clayton, Earl	CS71-38		
" " "	CS71-40		
Clayton, Helen J.	CS71-37		
Clayton-Dwyer Drilling Co.	CS71-36		
Cline, W. S.	CS71-117		
Cline, G. M.	CS71-466		
Cline, G. M. Company, Ltd.	CS71-466		
Coates, George H.	CS71-317		
Cobb, Dalton H.	CS66-61	06-14-66	
Cochran, Phil K.	CS71-690		
Coll, Max W. II & The Estate of James R. Stephens	CS60-34	04-15-60	
Collinsworth, A. E.	CS71-501		
Columbia Oil Corporation	CS60-10	12-03-68	
Commercial National Bank in Shreveport, Trustee	CS71-443		
Comprexion Company of Oklahoma, Inc.	CS70-44	07-07-70	
Comps, Inc.	CS71-137		
Cone, J. R.	CS66-69	07-20-66	
Cone, S. E.	CS66-71	07-20-66	
Connally Oil Company, Inc.	CS66-129	06-11-66	
Conover, William V.	CS60-19		
Consolidated Gas and Equipment Company of America	CS71-336		
Consolidated Production Corp.	CS71-538		
Constantin, E., Jr.	CS67-73	06-22-67	
Continental-Emaco Company, a Division of Youngstown Sheet & Tube Co.	CS60-3	10-14-66	
Cook, William H. Deceased et al.	CS71-445		
Coppinger, W. J.	CS71-368		
Coppock, Herbert L. & Coppock, Stanley, Jr.	CS71-52		
Covina Oil Corporation	CS36-101	07-20-66	
(Formerly McGrath & Smith)	CS71-147		Cancelled 3-18-71
Coral Gas and Oil, Inc.	CS71-28		
Cornell Oil Company	CS67-49	04-25-67	
Cornutt, Dona P.	CS71-243		
Corpus Christi Leaseholds, Inc.	CS71-435		
Cotner, Bill C. d/b/a Meadow Properties (Formerly Meadow Properties Ltd.)	CS67-18	11-14-66	
Cotton Petroleum Company	CS71-322		
Courtney, E. A., Agent	CS71-505		
Cowper Brothers Production Co.	CS66-121	06-11-66	
Cox, John L.	CS66-65	06-07-66	
Crawford, H. Victor	CS71-402		
Crawford, John L.	CS71-6	12-11-70	
Cree Oil Inc.	CS71-549		
Crouch, Louis	CS66-95	04-22-66	
Cruise, Pauline F. Vancleve	CS71-408		
Crystal Oil Company	CS71-530		

See footnote on p. 65a.

Small Producer Certificates, April 30, 1971—Continued

Seller	Docket	Order Issuing CS Cert.*	Other
Culbertson, E. A. & Irwin, Wallace W.	CS67-58	05-23-67	
D.D.I., Inc.	CS71-182	08-18-71	
DST Exploration Corporation	CS66-2	10-14-66	
Dacres Corporation	CS71-264		
Dalco Oil Company	CS66-96	07-20-66	
Dale, Cloris	CS71-142		
Dalport Oil Corporation	CS66-15	06-14-66	
Dameron, W. Frank	CS71-205		
Damson Exploration Corp.	CS66-40	06-04-66	
Danden Petroleum, Inc.	CS71-231		
Darmac Corporation	CS66-99	06-15-66	Terminated 06-17-66
Darnielle, George J.	CS67-71	06-22-67	
Darrow, Ann W.	CS66-35		Rejected 01-07-68
Daubert, Charles A., Oper.	CS71-273		
Davidson, William A.	CS66-49	07-25-66	
Davis Drilling Inc.	CS71-277		
Davis, K. W.	CS67-63	07-24-67	
Davis, Rebecca	CS70-7	09-17-69	
Davison, Leland, Estate of (Formerly Davison, Leland)	CS66-64	06-07-66	
Davon Drilling Company	CS71-266		
Davoust, Richard C.	CS66-86	06-14-66	
Dawson, Bobbie G.	CS71-129		
Dean, Betty M.	CS71-226		
Dean, Edwin A.	CS66-52	07-25-66	
Dean, Robert A.	CS66-43	04-16-66	
Deas, Rutledge H., et al.	CS71-353		
Deck Oil Company	CS71-223		
Deck, Millard Oil Company	CS66-18	01-21-66	
DeCleva, Paul	CS67-13	12-20-66	
DeJean, Mrs. Doris Gamble	CS71-507		
Delta Corporation	CS71-194		
Depco, Inc.	CS67-16	01-17-67	
Dillard, A. R.	CS71-171		
Dixilyn Corporation (Formerly Dixilyn Drilling Corp.)	CS66-25	02-24-66	
Dixon Management Corporation	CS71-485		
Dominion Oil & Gas Co.	CS71-332		
Donnell Drilling Company	CS71-533		
Dougherty, Mrs. James R., et al.	CS71-446		
Douglas, L. A.	CS71-301		
Dow Chemical Company, The	CS71-318		
Dual Production Company	CS66-163	05-24-66	
Dubose, Frank F.	CS71-49		
Duncan Drilling Company	CS67-59	06-22-67	
Duncan, J. Walter Jr.	CS66-12	11-20-67	
Duncan, Raymond T.	CS66-13	11-20-67	
Duncan, Vincent J.	CS66-14	11-20-67	
Duncan, Walter	CS66-15	11-20-67	
Dunigan, James B., Estate	CS71-212		
Dunigan, James P., Trust	CS66-24	10-25-67	
Dunigan, E. J., Jr.	CS71-59		
Dunigan, E. J., Jr., Trustee	CS71-58		
Dunn & Attebury	CS71-162		
Dwyer, Robert F.	CS66-80	09-16-66	
Dykes, J. A.	CS71-553		
Dyna Ray Oil & Gas Co., Inc.	CS71-539		

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Small Producer Certificates, April 30, 1971—Continued

Seller	Debit	Order Issued CS Cert.	Other
Kahle, W. H.	C870-8	08-17-68	
Kap & Crouse	C870-17	11-10-68	
Karhagen, Benjamin	C871-288		
Kelms, George W., Jr.	C867-102	08-28-67	
Elliott & Hall	C867-98	07-28-67	
Elliott Oil, Inc.	C867-92	07-28-67	Terminated 08-13-67
Elliott, Frank O. d/b/a Elliott Oil Co. (Formerly Elliott Production Co.)	C867-94	07-28-67	
Esauvald Oil Company	C871-473		
Esquire Oil Company	C871-487		
Esfield, Robert N.	C867-60	08-23-67	
Eppensaw, A. R.	C867-63	07-07-67	
Equipment Inc.	C871-611		
Euse, Nelson B.	C871-388		
Ester, Martha Clayton	C871-39		
Estrella Oil Company	C870-27	03-10-70	
Etchison & Gross Associates	C871-119		
Euamerica Partnership 60	C871-156		
Evke Development Company	C871-347		
Expando Production Co.	C871-377		
Exler Company	C870-61	08-21-70	
FTF Gas Corporation	C868-82	08-11-68	
Farr, Carolyn E. (Gribble)	C871-455		
Farr & Gribble, et al.	C871-456		
Farr, P. P. Douglas	C871-448		
Farrer, Fletcher F.	C870-24	04-13-70	
Fessel, W. C., Estate OEA	C871-206		
Fellers, W. J.	C871-65		
Ferguson Oil Company Inc.	C871-228		
Ferguson, W. B., III	C871-498		
Fields, Bert, Estate (Now Fields, Bert, Jr.)	C868-122	07-30-68	Succession 3-13-71
Fields, Bert, Jr. (Formerly Bert Fields Estate)	C868-122	07-30-68	
	C871-297		
Fine, Leland, Estate of Deceased	C867-64	07-24-67	
First National Bank of Amarillo, Trustee Betty Tell Trust	C871-439		
First National Bank in Bartlesville	C871-230		
First National Bank of Dallas as Trustee for Paul P. & Clara T. Scott (Now Argus Production Company)	C868-22	04-14-68	Substituting Argus 08-13-68
First National Oil, Inc.	C871-367		
Fishman, Felix A., et al. Trustees (Formerly Estate of William L. Harnstadt, Deceased)	C868-9	05-11-68	
Five Resources, Inc.	C870-32	04-07-70	
Flag Oil Corp. of Delaware	C867-65	07-24-67	
Fleet, Howard W.	C868-34	12-13-67	
Fleur Corporation	C868-128	08-11-68	
Ferus Company	C868-81	08-11-68	
Ferus, R. L.	C868-83	07-30-68	
Fert Worth National Bank Trustee	C868-8	12-03-68	
Foster Petroleum Corporation	C871-74		
Fowler, Tom D. & McDaniel, R. G. d/b/a Fowler & McDaniel	C868-42	08-04-68	
Fox, Grady L.	C871-64		
Fox, James O. Jr.	C867-38	05-04-67	
Friley Oil Company, Inc.	C871-411		
Francis Oil and Gas Inc.	C871-100		

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Small Producer Certificates, April 30, 1971—Continued

Seller	Decket	Order Issued CS Cert.	Other
Franka, Albert, III	C866-80	07-25-69	
Franklin, John M.	C866-16		Dismissed 11-20-67
Fraser, P. C.	C871-179		
Freeport Oil Company	C866-4	12-08-68	
French, L. R., Jr.	C867-105	01-22-68	
Frost, Jack, The Estate of	C871-678		
Fuhrman, F. H.	C866-58	08-22-68	
Fuller, Rex	C871-197		
Fuller, R. P.	C871-198		
Fulton, R. H.	C867-34	08-01-67	
The Fundamental Oil Corp.	C870-67	08-24-70	
" " " "	C871-9		Cancelled 09-28-69
G. H. K. Corporation	C871-349		
GMC Oil & Gas Corporation	C871-467		
Gackie, Albert	C866-10	07-20-68	
Gallagher, C. R., Jr.	C866-31	04-08-66	
Galloway, W. W.	C871-290		
Garlitz, C. Gary	C866-98	05-05-68	
Gas Gathering Corporation	C871-505		
Gasco, Inc.	C871-136		
Gates, A. P.	C866-95	09-16-69	
Gear, R. James	C871-112		
Gentry, James U.	C866-60	06-13-69	
Geochemical Surveys	C871-10	11-23-70	
Gibbons, Ed	C871-289		
Gifford, J. N.	C871-189		
Gifford & Mitchell	C871-190	03-18-71	
Ginsberg, Arthur I.	C866-64	09-16-69	
Gintner, Warren and Company	C871-8	11-28-70	
Global Oils, Inc.	C871-62		
Glover Hefner Kennedy Oil Company	C871-128		
Goldston, Iris & Goldston, W. J. Successor Trustee for Walter L. Goldston Trust	C870-5	09-16-69	
Goodrich, John S.	C870-43	07-20-70	
Gould, George D., Trustee	C867-39	04-25-67	
Grace, Corinne	C871-161	02-17-71	
Grace, Joseph Peter	C866-17		Dismissed 11-20-67
Graham, Bill J.	C867-45	04-04-67	
Graham, George W., Inc. O&A	C871-294		
Graham Michaels Drilling Company and Sierra Petroleum Co. Inc.	C871-178		
Grammer, Jessica	C866-04	09-16-69	
The Gray Wolfe Company	C871-314		
Greany, Rosemary Hyle	C866-11	12-16-68	
Great Western Drilling Company	C866-124	07-20-68	
Greathouse, Pierce & Davis	C867-101	07-28-67	
Green, E. L., Jr.	C871-214		
Green, G. W.	C871-45	01-18-71	
Greenbrier 64 Limited	C867-39	08-13-67	
Greenlee, Melba Jean Davis Executrix Est. of Geraldine T. Davis	C870-6	08-17-69	
Gribble & Hartman	C871-480		
Grogan, Doyle T.	C871-284		
Grover, MacCurdy & Hoffacker	C866-106	06-14-66	
Gruenewald, William	C871-242		
William Gruenewald & Associates Inc.	C871-241		
Groy Management Service Company Agent for Cador Petroleum Corp.	C870-9		

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Small Producer Certificates, April 30, 1971—Continued

Holder	Debit	Order Number CS Cert.*	Other
Orysborg, Jack J. & Celeste C.	CS871-839		
Osby, A. A.	CS888-81	02-18-69	
Oxli Minerals Incorporated	CS871-288		
Ox, Rainer E.	CS888-81	07-25-69	
Paderkamp, A. O.	CS871-288		
Parker, John A.	CS871-172		
Pike, Elwyn C. & Mabel E.	CS888-87	08-28-68	
Hamilton Brothers Pet. Corp.	CS871-77		
Puma, Richard B.	CS888-88	06-04-69	
Pummonds, G. Scott	CS888-74	07-20-68	
Puman, Jake L.	CS888-107	07-13-68	
Pasley Company	CS870-48	08-22-70	
Pascon Oil Corporation	CS871-20	12-11-70	
Parley, C. O., Oper.	CS871-282		
Parkins & Company	CS871-248		
Parkins, E. T.	CS867-23	01-24-67	
Parlow, W. V.	CS871-114		
Parris, John M.	CS888-83	08-16-69	
Parris, R. C.	CS-71325		
Parrison, Dan J., Jr. (I)	CS-71545		
Parrison Oil Company (II)			
Parrison, D. J.	CS871-525		
Patt, Patricia Ruth Carter	CS888-23	12-15-67	
Pattman, W. L.	CS871-14	02-05-71	
Pawley, J. M.	CS871-33		
Pawtherne, Hugh A.	CS871-288		
Paynes, Charles A.	CS888-9	12-08-68	
Payne-Mayer	CS871-225		
Peath, Mary Horne	CS888-3	09-27-67	Name Change 09-10-70
(New Horne, Mary Madeline)			
Pellett, James D.	CS871-945		
Pelmy & Prather Oil Co.	CS871-375		
Penderman, J. Harry, Jr.	CS871-483		
Pendrix, John H.	CS888-13	12-16-68	
Perd, J. H.	CS888-43	04-16-68	
Pernstadi, William L. Estate of Deceased (New Fishman, Felix A.)	CS888-9	05-11-64	Name Change 11-25-70
Perrmann, A. E., Corp.	CS871-234		
Picks Durham, Inc.	CS871-601		
Picks, Robert F.	CS867-23	01-24-67	
Highland Production Company	CS870-30	02-10-70	
Pill, John H.	CS871-68		
Pills, F. N. Production	CS871-370		
Pines and Hobbs	CS871-368		
Pines, Johnny E.	CS871-372		
Pines, Johnny E., et al.	CS871-371		
Pirsch, William B.	CS871-498		
Pinson Drilling Company	CS888-08	08-16-69	
Pledge, Floyd M.	CS871-330		
Podges, A. J. Industries Inc.	CS871-433		
Polder, Horace M.	CS871-304		
Polt Brothers	CS871-229		
Polt, O. C.	CS871-180		
Poltson, Walter B.	CS888-61	08-13-69	
Pomeyman, Robert B., Jr.	CS888-28	07-20-68	
Porne, May Madeline (Formerly Peath, Mary Horne)	CS888-3	09-27-67	

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Small Producer Certificates, April 30, 1971—Continued

Seller	Docket	Order Issuing CS Cert. ^a	Other
Horner, Richard R.	CS71-532		
Houston Oil & Minerals Corporation	CS71-453		
Howard, Frank A. Estate of	CS86-18	11-20-67	
Huber, Fred Trustee	CS86-86	09-16-69	
Hudson, Edward R. Jr. &	CS87-83	08-13-67	
Hudson, William A., II			
Hudson, William A. and Edward R.	CS86-5		Returned 11-08-66
" "	CS71-260		
Humphrey, Joe A.	CS71-111		
Hunter, J. D., Trustee	CS87-81	07-26-67	
Husky Oil Company of Delaware	CS86-33	06-14-66	
(Formerly Husky Oil Company)			
Husky Oil Company of Delaware	CS71-47		
Hut, Less d/b/a	CS71-247		
H and J Drilling Co.			
Imperial-American Management Company	CS86-56	07-26-69	
Inesco Oil Company	CS71-254		
Inman, Curtis R.	CS86-60	07-20-66	
Inv stores Petroleum Corporation	CS87-35	06-26-67	
J. M. Well Service, Inc.	CS71-406		
Jackman, David Jr. and Armstrong, Robert C.	CS71-145		
Jackson, Donald W.	CS71-177		
English Jackson, Inc.	CS87-14	11-14-66	
Jeffries, Bradley and Body	CS71-240		
Jenkins, Stewart R., Jr.	CS71-306		
Jenkins, T. D.	CS86-78	09-16-69	
Jenkins, Winston	CS71-441		
Jet Oil Company	CS71-391		
Johnson & French Oil Company	CS86-24	07-20-66	
Jones, Edwin M. Oil Co.	CS71-364		
Jones, L. E. Production Company, et al.	CS71-809		
Jones & Fellow Oil Company	CS71-157		
Judd, Michael T.	CS71-496		
Kadane, G. E. & Sons	CS71-287		
Kaler, Herman Geo.	CS71-179		
Kalvin, Nathan	CS71-477		
Kansas Petroleum, Inc.	CS71-164		
Kemper, Alexander G.	CS87-100	07-29-67	
Keating-Parker Drilling Co.	CS71-256		
Kanmore Oil Company, Inc.	CS71-472		
Kenworthy, Paul W.	CS71-209		
Kanyon, Clarence	CS71-292		
Kerts, Jeanne E.	CS87-96	07-21-67	
Kermit Oil Company	CS87-6	11-14-66	
Kestler, C. M.	CS86-69	09-16-69	
Kewanee Oil Company	CS86-12	07-20-66	
Kibo Compressor Corporation	CS70-29	02-10-70	
Kimball, Alberta S.	CS86-87	07-20-66	
Kimberlin & Dunn	CS71-185		
Kimsey, Roy E., Jr.	CS86-66	07-20-66	
King, Beverly Ann Laskey	CS71-415		
King, Robert E.	CS71-342		
King, Warren Dye	CS87-90	07-26-67	
Kingwood Oil Company	CS71-41		
Kinne, M. L.	CS71-507		
Krikpatrick Oil and Gas Co.	CS71-42		
Kluthe, Joseph G.	CS89-30	03-20-69	

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Small Producer Certificates, April 30, 1971—Continued

Seller	Docket	Order Issuing CS Cert.	Other
Knight, Lester T.	CS871-489		
Kornblid, Jay	CS871-332		
L & B Oil Gas Company	CS871-181		
L & N Production Company	CS867-46	08-13-67	
Lacy, James W.	CS868-42	08-13-69	
Ladenburg, Thalmann & Company	CS867-88	07-26-67	
LaFave, W. Watson	CS866-102	06-14-66	
Lamb, James L., Jr.	CS868-36	12-13-67	
Lament, Thomas S.	CS868-19		Dismissed 11-20-67
Landmark Oil, Inc.	CS868-125	06-11-66	
Lange, R. W.	CS871-232		
Langham, J. T.	CS866-58	04-08-66	
Laster, Cecil L.	CS871-27		
Laster, Sidney	CS868-42	04-08-66	
Larson, Perry E.	CS871-379		
LaRue, C. E. & Muncy, B. N., Jr.	CS868-34	02-24-69	
Lauby, Linda Marie	CS871-418		
Leach, Leonard	CS867-3	05-27-66	
Lario Oil & Gas Company	CS870-35		Returned 02-19-70
Late Oil Company	CS867-60	06-22-67	
D. R. Lauck Oil Company, Inc.	CS871-166		
Lawson, D. J.	CS869-85	09-16-69	
Lear Petroleum Corporation	CS871-26		
Leach, Edward H.	CS868-39	04-08-66	
Leben Drilling, Inc.	CS871-54	02-17-71	
Lechner and Hubbard	CS871-382		
Leffore, Paul K. & E. H. Klein	CS871-357		
Lehrs, Petroleum Company, Inc.	CS871-213		
Lenmons, Blanche	CS868-50	06-05-66	
Leonard, J. M.	CS868-28	02-28-66	
Leonard Oil Company	CS868-20		Withdrawn 11-23-66
Lesh Company	CS867-28	03-13-67	
Lewis, J. Koet	CS871-497		
Leyhe, Edward F.	CS866-86	07-20-66	
Livermore, George P.	CS867-87	07-28-67	
Letts, J. Stewart, Dr.	CS869-101	09-16-69	
Ligne & Patterson	CS871-367		
Lene Star Explorations, Inc.	CS871-84		
Long, C. E.	CS869-27	02-24-69	
Longhorn Service & Drilling Co.	CS871-419		
Lonita, Inc.	CS871-61		
Love, Ralph, Estate of	CS870-15	10-15-69	
Lundbeck, G. Hiltner, Jr.	CS866-20	11-20-67	
Lundella, Inc. OEA	CS871-288		
Lyle, W. M., Estate of, Scott B. Appleby, W. O.	CS866-5		
Anderson and Demova K. Frost			
Lynch, Jess d/b/a Savage Oil Co.	CS867-27	01-24-67	
Lynn, C. H., Sr.	CS871-628		
Lynn, Richard T.	CS866-113	06-24-66	
M and B Well Service	CS868-117	06-07-66	
MEB Oil Company (New Bourg, Oscar, Estate of)	CS868-5	06-28-67	Name Change 03-31-70
MKA Oil Properties	CS869-39	06-04-69	
MWJ Producing Company	CS869-68	07-25-69	
McAister Fuel Company	CS867-77	07-07-67	
McBride, W. C., Inc.	CS871-643		

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Small Producer Certificates, April 30, 1971—Continued

Seller	Docket	Order Issuing CB Cert.*	Other
McCall, Jack O.	C867-17	11-14-66	
McCammon, J. H.	C871-3	02-10-70	
McCarty, T. A.	C871-329		
McCarty, W. A. and Haslemood, John	C871-151		
McClain, O. G.	C871-279		
McCombs, Barbara B.	C867-58	05-04-67	
McCommons Oil Company O&A	C871-285		
McCutchin, Alma (Operator)	C871-680		
McCutchin, Benjamin C. (Self)	C871-488		
McCutchin, Gene (Self)	C871-489		
McCutchin, Jerry (Self)	C871-479		
McCutchin, Ronald Lee (Self)	C871-481		
MacDonald, Burns & Norris #2	C871-451		
MacDonald Oil Corporation	C870-10	10-15-68	
McFarlin, E. B. & Ketchum, E. P.	C868-140	02-07-68	
McGrath & Smith (New Oglesby Oil Corporation).	C868-182	07-20-68	Succession 2-12-71
McKnight, Byron	C871-48	01-12-71	
McMillan, J. G.	C870-45	07-07-70	
McMullan Exploration Co.	C871-381		
Mabee, Joe	C867-68	05-02-67	
Mack Oil Company	C871-194		
Maguire Oil Company	C871-122		
Major, Global & Fortner	C868-21	02-20-69	
Mallard Exploration, Inc.	C871-326		
Mallone-Mahoney, Inc., Mahoney Drilling Company, T. W. Mahoney	C871-444		
Mama Resources, Inc.	C871-17	02-17-71	
Mander Oil Company	C871-286		
Markham, Cone & Bodiam	C868-70	07-20-68	
Markham, Jack	C867-79	07-28-67	
Markin Corporation	C871-12	11-23-70	
Marrow, N. B.	C867-19	11-14-68	
Marlow Oil Company	C871-126		
Marshall, William Bartlett	C871-180		
Marshall & Winston, Inc.	C871-374		
Maxwell Oil Company	C868-2	07-20-68	
May, John L.	C868-60	02-14-68	
May Petroleum Inc.	C871-83		
Maynard Oil Company	C871-283		
Medco Properties Ltd. (New Bill C. Cotner d/b/a Medco Properties)	C867-18	11-14-66	Name Change 04-12-70 Returned 05-12-69
Meeker & Company	C868-47		
Meeker, J. J.	C868-55	07-25-69	
Meeker, L. H.	C868-54	07-25-69	
Meeker, W. W.	C867-43	02-13-67	Terminated 7-25-68
Meeker, William Wade Estate of	C868-48	07-25-69	
Melbourne Corporation	C868-70	02-16-69	
Milton, M. L.	C870-25	02-03-70	
Mercantile National Bank at Dallas Trustee of the L. L. Home Testamentary Trust (Consolidated with C868-3 Mary Home Heath)	C868-2	02-01-67	Returned 02-21-67
Merrion, J. Gregory	C871-548		
Mesa Petroleum Co., et al. (Formerly Petroleum Exploration, Inc. of Texas)	C867-83	12-21-67	
Messman-Rinehart Oil Company	C871-180		
Me-Tex Supply Company	C868-123	02-07-68	

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Small Producer Certificates, April 30, 1971—Continued

Settle	Docket	Order Issuing CB Cert.*	Other
Metropolitan Oil Corporation	C871-289		
Meyer, S. G., Jr., et al.	C871-347		
Miami Oil Producers, Inc.	C871-361		
Midwest Oil Corporation	C882-123	05-20-68	
" " "	C887-9		Cancelled 12-29-69
Midland National Bank, Trustee	C886-40	05-20-68	
Midstate Gas Transportation Co.	C871-526		
Midwest Oil Corporation	C886-97		Rejected 04-01-69
Miles Kimball Company	C886-86	07-20-68	
Mills, F. H. Jr.	C871-258		
Mines Oil & Gas Company	C871-280		
Minter, Nora Lasky	C871-440		
Mitchell & Lewis	C871-614		
M. J. Mitchell	C871-236		
Mitchell Oil Company	C871-190		
Mobley, George A.	C867-72	05-22-67	
Momerif, W. A.	C867-10		Withdrawn 05-28-67
Momerif, W. A.	C867-96	07-26-67	
Monroe, Eugene R.	C871-153		
Moutin, William V.	C871-675		
Moore, J. Hiram	C886-110	05-14-68	
Moore, Kenneth B.	C871-118		
Moore, Samuel H.	C886-82	05-16-69	
Moorehead, Ethyle	C871-312		
Moran, R. M.	C871-131	02-05-71	
Morgan Petroleum Company	C871-366		
Morris, Ann W.	C886-14	12-15-68	
Morrison, Graham B. and York, O. C.	C871-266		
Moses, Henry & Lucy Foundation Trust	C866-7	05-11-68	
Moss, Lucy G.	C866-6	05-11-68	
Moss, Joseph F.	C871-423		
Mountain States Petroleum Corporation	C871-16	12-11-70	
Mourund, A. W.	C871-67		
Muelier, Joseph P.	C871-286		
Mull Drilling Co., Inc.	C871-60		
Mull, J. A., Jr.	C871-72		
Muse, Albert C.	C866-123	05-11-68	
Nabob Production Company	C871-115		
Namus Oil & Gas Corporation	C867-61	05-22-67	
National Bank of Tulsa, Executor of the Estate of James A. Chapman, Deceased	C886-28	04-15-69	
National Cooperative Refinery Association	C886-32	04-15-69	
National Exploration Company	C871-454		
Neish Gas & Oil Corporation	C886-121	07-20-68	Terminated 04-17-70
Ne-O-Tex Corporation	C867-15	12-20-68	
Newmont Oil Company	C871-510		
Newton, Donna Elizabeth Lasky	C871-417		
Nichols, Don R.	C871-328		
Nichols, L. B., Jr.	C871-343		
Ni-Gas Supply, Inc.	C886-29	04-15-69	
Nilsen, Carl A.	C871-278		
Nolan, William C. & Theodosia M. d/b/a Munoco Company	C867-75	06-07-67	
Nomac Oil Company, Inc.	C871-225		
Norman, D. M.	C886-51	05-05-68	
North American Royalties, Inc.	C871-152		
North Central Oil Corporation	C867-6	12-20-68	

See footnote on p. 63a.

Small Producer Certificates, April 30, 1971—Continued

Seller	Debit	Order Issued CS Cert.*	Other
North Star Petroleum Corp.	CS71-198		
Northern Pump Company	CS71-22	08-18-71	
Norwood Oil Company and/or Norwood Drilling Company	CS88-28	12-15-87	
The Novey Corp.	CS71-300		
The Nueces Company	CS88-116		Withdrawn 04-28-89
Nutt, T. L.	CS71-140		
O F & R Oil Company.	CS87-48	05-31-87	
O'Banion, Robert	CS71-489		
O'Brian, James F.	CS89-97	09-16-89	
O'Brien Company	CS71-116		
O'Doyle, John W.	CS71-346		
O'Meara, Robert W.	CS71-882		
O'Neill, Joseph L., Jr.	CS87-108		Dismissed 11-28-87
O'Neill, Joseph L., Jr.	CS88-21	11-20-87	
O'Quinn, Frances M.	CS71-408		
Oakland Corporation	CS71-355		
Oehlschager, F. Keith, Dr.	CS70-83	08-31-70	
The Ohio Fuel Supply Company	CS71-427		
Oil Finders, Inc.	CS71-408		
Oil & Gas Futures, Inc.	CS71-422		
Oil Properties, Inc.	CS71-237		
Oil Well Drilling Company	CS88-41	07-20-88	Terminated
Olsen, Howard	CS87-44	08-12-87	
Ortinger, Alma	CS71-267		
Ormand Industries, Inc. (Formerly Ryan Consolidated Petroleum Corp.)	CS88-137	08-11-88	
Ostern, W. B., Jr.	CS71-126		
Outline Oil Corporation	CS71-275		
Owen, A.	CS70-18	11-10-89	
Owen, Robert L.	CS70-23	12-02-89	
Owark-Mahoning Company	CS71-88		
Palmer, J. T.	CS71-554		
Panhandle Producing Company	CS71-44		
Parker & Parsley	CS87-25	07-26-87	
Parkes, Frank	CS71-110		
Patell Corporation	CS71-402		
Patrick, Roland J.	CS71-174		
Paul, C. M., Colonel	CS88-38	09-18-88	
Payne, Clifford E.	CS87-88	07-28-87	
Peerless Incorporated	CS71-90		
Peet, Edwin J., Trustee Assignee of Johnnye Jones Peet, d/b/a Peet Oil Company	CS71-428		
Penner, Ted	CS88-53	07-25-88	
Perum, Neville G.	CS88-53	06-14-88	
Perrowe Production Company	CS88-53	06-14-88	
Penton & Penton	CS88-15		Withdrawn 07-28-89
" "	CS71-420		
Perritt, H. W.	CS71-478		
Peterson, French	CS70-4	09-18-89	
Petroleum Corporation	CS71-315		
Petroleum Corporation of Texas	CS70-37	06-08-70	
Petroleum Exploration, Inc. of Texas (Now Mesa Petroleum Co.)	CS87-82	07-07-87	Succeeded to by Mesa 12-21-87
Petro-Search Inc., et al.	CS71-615		
Pevchens, B. J.	CS88-72	08-18-88	
Pharson, Richard, Dr.	CS88-89		Withdrawn 08-18-89

See footnote on p. 65a.

Small Producer Certificates, April 30, 1971—Continued

Seller	Debit	Order Issuing CS Cert.*	Other
Phillips Development Co.	CS71-32		
Phillips, H. H.	CS71-313		
Phillips, W. C.	CS71-309		
Plum, John Douglas	CS71-168		
Plummer, Paul E., Jr., Agent for Paul E. Plummer, et al.	CS71-238		
Pope, A. W.	CS71-527		
Polt, Louis	CS67-46	08-13-67	
Pul and Heeper Oil Properties	CS71-310		
Powell, C. A. and Stone, D. J. d/b/a Powell & Stone	CS71-221		
Powell, Collette V. Trust	CS66-69	06-14-66	
Pratt's Producing Company	CS71-421		
Prudhoe Corporation O&A	CS71-488		
Prudhoe Oil & Gas, Inc.	CS71-183		
Prudhoe Gas Company	CS71-25		
Propp, E. D.	CS71-234		
Prudential Minerals Exploration Corporation	CS71-283		
Puckett, L. H.	CS71-48		
Purley, C. F.	CS71-244		
Purley, C. F. and Purley, Erwin	CS71-245		
Purley, C. F., Erwin Purley and Jim Cornutt	CS71-246		
EPL Oil Company, Inc.	C989-41	08-04-69	
Rahn, Emmett J.	CS71-534		
Raney, Roy H. and Clyde M. Gamaway d/b/a Raney & Gamaway Oil & Gas Properties	CS71-21	03-05-71	
Rasmussen, James W.	CS60-16	13-16-60	
Ray, Bernard A.	CS67-57	05-04-67	
Reid & Stevens, Inc.	CS70-42	07-07-70	
Reid, Thomas A.	CS66-48	06-18-66	
Reidling & Bates, Inc.	CS71-522		
Reidman Development Corporation	CS67-57	07-24-67	
Reidman Oil Company	CS67-56	07-20-67	
Regester, H. W.	CS66-125	06-11-66	Terminated 03-19-70
Reigs, E. E. d/b/a Richmond Drilling Company	CS66-64	07-20-66	
Reischmidt, Christie T.	CS71-467		
Reidman Development Corporation	CS71-113		
Reidman Oil Company	CS71-140		
Reidman Oil & Gas Company	CS66-72	07-28-66	
Reid & Sheldon	CS66-26	06-14-66	
"	CS71-307		
Rasmussen, Louis A., Dr., Estate of and Rasmussen, Louis A., Jr., Executor	CS70-16	11-10-69	
Rice, Ruth C.	CS71-57		
Richome Oil & Gas Company	CS71-65		
Rice Corporation	CS66-134	06-11-66	
Richock Exploration Company, Inc.	CS71-29		
Ribick, A. S., et al.	CS71-208		
Ribick, M. H. W.	CS66-54	10-14-63	
Roth, C. Henry	CS71-544		
Roberts, Fred	CS71-311		
Roberts and Whitman Petroleum Inc.	CS71-359		
Robertson, French M.	CS66-67	04-23-66	
Robinson, L. L.	CS71-385		
Roden Oil Company	CS66-33	04-15-66	
Rodman, E. G.	CS66-80	11-07-66	
Rodman, E. G. O&A	CS66-81	11-07-66	Terminated 06-23-70

See footnote on p. 65a.

Small Producer Certificates, April 30, 1971—Continued

Seller	Deebet	Order Issued On Cert.*	Other
Rodman & Loh (see Thomson Petroleum Corp. & Loh, et al.)	C886-48	11-27-66	Terminated 6-23-70
Rodman Oil Company (see Thomson Oil Company)	C886-49	11-27-66	Terminated 6-23-70
Rodman Petroleum Corporation (see Thomson Petroleum Corporation)	C886-50	11-27-66	Terminated 6-23-70
Rogers, M. D.	C886-70	08-18-69	
Rollins, Harry E., Dr.	C886-67	08-18-69	
Rosenthal, Jerome B.	C886-78	08-23-67	
Ross, Walter M.	C886-68	08-18-69	
Rucker, H. J.	C871-66	04-18-71	
Rudman, M. B.	C887-4	11-14-66	
Rudman Resources, Inc.	C871-175	02-17-71	
Rushmore, Robert T.	C871-603		
Russell, Jack L.	C886-111	05-24-68	
Russell, Jane Clayton	C871-94		
Rutherford, F. B.	C887-97	07-29-67	
Rutter and Company Ltd.	C870-39	07-31-70	
Rutter, A. W.	C870-66	07-31-70	
Rutter, A. W., Jr.	C870-40	07-31-70	
Rutter & Wilbanks Brothers	C887-64	07-07-67	
Ryan Consolidated Petroleum Corp. (Now Ormond Industries)	C886-127	08-11-66	Name Change 04-07-70
S & G Oil Company, Inc.	C871-421		
Sabine Oil Industries Inc.	C871-196		
Sage Petroleum Company	C871-300		
Samedjian Oil Corporation	C871-430		
Sams Oil Corporation	C886-41	07-25-69	
Sandlin, Walter P., Receiver	C870-96	02-02-70	Terminated 07-07-70
Saunders, Howard F.	C871-104		
Schaefer, Nicholas J.	C871-440		
Schimmel Oil Co.	C871-302		
M & G and Schneider Oil Company	C886-104	05-24-68	
Schneider, Tom	C870-19	11-10-69	
Scott, Chas. W., et al.	C871-187		
Seale, John G.	C887-42	08-13-67	
Seewald, Hughes	C871-73		
Sample, C. A.	C886-71	08-18-69	
Sample, Charles O.	C886-68	08-18-69	
Service Drilling Co.	C871-144		
Shaffer, Milton F. OEA	C871-324		
The Shallow Water Refining Co.	C871-326		
Shirley & Company Properties	C886-21	08-28-68	
Shes, Edward L., Estate of	C871-60		
Shes, Peter L.	C886-32	11-20-67	
Shenandoah Oil Corporation	C886-28	11-20-67	
Sherrill, Virginia	C871-364		
Sherrad, Clifford H., Jr.	C871-100	02-08-71	
Shettle, George O.	C871-192		
Shield, Fred W.	C871-236		
Sidwell, E. C.	C871-489		
Sidwell Oil and Gas, Inc.	C871-125		
Sigma Exploration Corporation	C871-124		
Simmons, Jay	C871-143		
Singer-Fleischer Oil Company	C886-37	12-15-67	
Slade, Inc.	C871-363		
	C886-23	04-08-68	Terminated 07-27-70

See footnote on p. 65a.

Small Producer Certificates, April 30, 1971—Continued

Seller	Decket	Order Issued On Cert.	Other
Shaw, M. L. a/k/a Marion L. Shaw and Marie R. Shaw	CS71-130		
Smith, Earl T. and Associates, Inc.	CS71-31		
Smith & Griddle	CS71-428		
Smith, Marie Watkins (Mrs.)	CS71-551		
Smith, W. H. Construction Company	CS71-324		
Smith, Earl W.	CS80-95	02-15-69	
Snod, Charles R.	CS71-425		
Snod, William R., Estate of	CS71-490		
Snor, D. R.	CS71-404		
Snodow, A. Walter, Agent for Betty Gating	CS80-37	05-04-69	
Robertson, Glen R.	CS71-68		
Solar Oil Company	CS80-37	07-25-69	
Sumerville, J. Keith	CS71-128	08-13-71	
South States Oil and Gas Company	CS71-305		
Southern Minerals Corporation	CS80-30	02-21-68	Terminated 02-14-68
Southern Petroleum Exploration, Inc.	CS80-37	04-05-68	
Southeast Royalty Company	CS80-114	07-29-68	
Southeast Oil Industries, Inc.	CS71-155		
Southeastern Exploration Commitments, Inc.	CS71-394		
Southeastern-Orester Estate No. 1 Limited	CS80-65	07-20-68	
Southeastern Mutual Gas, Inc.	CS80-127	02-11-69	
Spight, June D.	CS80-39	11-09-67	
Spencer, Aurelia	CS80-105	06-14-68	
Spreading, L. R. and/or Spreading Drilling Company	CS71-191		
Stanley, Larry	CS80-92	02-16-69	
Staples, James W.	CS80-31	Cancelled... See C180-742	
State Exploration Company and States Petroleum	CS71-534		
Steel, S. D.	CS80-95	02-16-69	
Stessel, R.	CS71-68		
Stewart, Edmund L., Trust	CS71-304		
Stewart Oil & Gas, Inc.	CS71-508		
Stockard, W. A., et al.	CS71-412		
Stultz, Deane H.	CS80-32	02-10-69	
Stumbers, Jack J.	CS76-1	02-16-69	
Strahan Oil & Gas Company, Inc. For Rent and as Operator for Non-Signatory Co-Owners, James W. Adcock and W. J. Wegman, Jr.	CS71-425		
Strait, F. W., Inc.	CS71-471		
Stringer, J. Frank	CS80-38	02-01-68	
Sutton Oil & Gas Company, Inc.	CS71-512		
Sunbelt Energy Inc. (Formerly Western Oil Fields, Inc.)	CS71-414		
Sunset International Petroleum Corporation	CS70-14	10-15-69	
Sunshine Royalty Company	CS67-59	07-20-67	Terminated 01-25-71
Swift-Stone Corporation	CS71-455		
Tate & Griddle	CS71-489		
Taylor, Jack G.	CS71-624		
Taylor, Vernon Jr.	CS71-69		
Taylor, W. H., Estate	CS71-95		
Texas Petroleum Corp.	CS71-360		
Tevakbury, Buford	CS71-696		
Texas Oil Corporation	CS80-106	07-20-68	
Texas Oil Company	CS71-462		
Texas American Oil Corporation	CS67-35	02-12-67	

See footnote on p. 63a.

Small Producer Certificates, April 30, 1971—Continued

Seller	Debit	Order Issued CS Cert.	O/S
Texas City Refining, Inc.	CS870-15	10-05-60	
Texas Crude, Inc.	CS871-299		
Texas Crude Oil Company	CS869-48	07-25-60	
Texas Crude Oil, Inc.	CS871-280		
Texas Gulf Sulphur Corporation	CS871-383		
Tenstar Exploration, Inc.	CS871-30		
Thagard, George F., Jr.	CS871-1	00-10-70	
Thagard, George F., Jr., Trustee	CS871-2	00-10-70	
Thalman, E. H.	CS871-330		
Thomas, Clifton	CS870-34	02-31-70	
Thomas, Evan A.	CS871-439		
Thomas, Max L.	CS871-434		
Thompson & Coors	CS868-47	07-20-66	
Thompson, Craft	CS870-12	10-15-69	
Thompson, J. Cleo	CS867-24	01-24-67	
Thompson Operating Company	CS871-94		
Thompson, Roy	CS871-409		
Thornton Oil Company (Formerly Rodman Oil Company).	CS868-49	11-07-66	Terminated 08-23-70
Thornton Petroleum Corporation (Formerly Rodman Petroleum Corporation).	CS868-52	11-07-66	Terminated 08-23-70
Thornton Petroleum Corporation and Late (Formerly Rodman and Late).	CS868-48	11-07-66	Terminated 08-23-70
Thornton, Risher M. III	CS869-100	00-16-60	
Throckmorton, R. E.	CS871-328		
Tipperary Resources Corporation	CS871-11	12-21-70	
Todd, W. L., Jr.	CS868-16	06-14-66	
Trace, Inc.	CS869-1	00-03-68	
Tresser, Gerald T.	CS871-444		
Triangle J. Oil Company	CS871-576		
Tribune Oil Corporation	CS869-26	06-30-60	
Trident Corporation	CS871-521		
Trident Oil & Gas Corporation	CS871-513		
Triple S Oil Company	CS871-321		
Tri-Service Drilling Company	CS867-87	09-13-67	
Trumart Oil Company	CS871-211		
Tucker, R. C.	CS867-62	07-24-67	
Tucker Drilling Company, Inc.	CS868-3	07-20-66	
Turner, Fred, Jr.	CS867-98	07-28-67	
Turner, J. S.	CS871-381		
Two States Oil Company	CS868-35	12-29-67	
Tyra & Tyra	CS869-20	01-21-69	
Tyrrell, W. C., Jr., (Formerly Tyrrell, W. C., Trust)	CS867-21	07-28-67	
Underwood, Rip C.	CS871-46		
Union National Bank of Wichita, Executor of the Estate of Walter F. Kunh, Deceased	CS871-158		
U.S. Natural Resources Inc.	CS871-276		
U.S. Smelting, Refining & Mining Company	CS867-85	07-07-67	
Umm, Incorporated	CS870-50	00-21-70	
Valley Investment Corporation	CS869-63	00-16-69	
Vaughn, G. H., Jr. and Vaughn, Jack C.	CS866-14	06-14-66	
Vaughn Petroleum Inc. (For Itself & As Agent)	CS871-582		
Venus Oil Co.	CS871-262		
Vest, Karl d/b/a Vest, Derbandt & Ross	CS868-130	06-11-66	
Vierman and Cockran	CS871-53		
Vierman, Sam J.	CS871-64		

See footnote on p. 83a.

Small Producer Certificates, April 30, 1971—Continued

Seller	Debit	Order Issuing CS Cert.*	Other
Vlamm, Sam K., Jr.	CS71-53		
Vlamm, M. C.	CS69-45	07-25-69	
Voor Mac, Trust	CS71-361		
Wager, Dan R. & Diane Oil Co.	CS71-637		
Wakefield, Jean Bristol	CS71-474		
Walkup, Bruce	CS66-126	05-15-66	
Wallace, Robert R.	CS66-46	04-18-66	
Wallen Production Company	CS67-104	06-30-67	
Walters, Carl E.	CS69-7		Rejected 10-09-69
Warren, Curtis	CS66-4	06-28-67	
Warren, Darrell S.	CS66-109	05-15-66	
Warren, Guy L.	CS71-365		
Watts, Ed. E.	CS66-43	04-08-66	
Way, Ralph L.	CS71-267		
Weaver, Shirley H., Trust	CS66-94	04-22-66	
Weaver, W. Carlton	CS71-517		
Weaver, W. R.	CS66-98	04-22-66	
Webb, Del E.	CS66-80	01-22-66	
Webber, Jack, et al.	CS71-536		
Weber, Frederick Palmer	CS69-84	09-16-69	
Weier, A. D., Jr.	CS66-25	06-14-66	
Welborn, J. M.	CS67-78	07-26-67	
Welch Lumber Company	CS71-506		
Weitman, Louis H., et al.	CS71-531		
Werner, Ronald L.	CS71-397		
Wesely, Arthur J.	CS71-63		
Wesely Petroleum, Ltd.	CS71-75		
Westates Petroleum Company	CS66-115	07-20-66	
Westbrook, V. H.	CS71-154		
Westbrook-Thompson Holding Corporation	CS66-113	06-14-66	Terminated 09-10-70
Western States Producing Company	CS69-4	10-14-68	
Westhoma Oil Company	CS71-91		
Westmore Drilling Company, Inc.	CS71-173		
Westrans Petroleum Inc.	CS71-470		
Wheeler, Roger M.	CS71-300		
Whelan Industries	CS71-305		
Whelan, N. H. OEA	CS71-308		
White, Robert F.	CS71-163		
Whitley, Frank J.	CS67-60	06-22-67	
Whittington, G. R.	CS71-101		
Wichita Industries Inc.	CS71-300		
Wichita Resources, Inc.	CS71-13	12-11-70	
Wichita Resources 701 Ltd.	CS71-541		
The Wil-MC Oil Corporation	CS71-291		
Wilbanks, Bruce A.	CS69-17	12-16-68	
Wilbanks & Rasmussen	CS69-31		Withdrawn 11-02-67
Wilkinson, Lester	CS71-15		
Williams, Alfred J.	CS70-36	04-30-70	
Williams, Betty M.	CS66-92	04-22-66	
Williams, Clayton W., Jr.	CS66-91	04-22-66	
Williams Brothers Company	CS66-27	02-15-66	
Williams, John W. and Commerce Trust Com- pany, Executors of Estate of Dorsey A. Williams	CS66-32	06-17-66	

See footnote on p. 65a.

Small Producer Certificates, April 30, 1971—Continued

Seller	Decket	Order Issued On Card.*	Other
Williams Properties, Inc.	C871-176	02-17-71	
Williams, Raymond A., Jr.	C882-5	11-14-66	
Williams, Robert L. d/b/a Imperial Oil Company	C871-272		
Winnor Oil Inc.	C871-380		
Fred Wilson Drilling Co. Inc.	C871-320		
Wilson, Robert P., et al	C871-362		
Wilson, T. B.	C871-363		
Wolden Oil Company	C886-02	07-26-66	
Wolden, R. E.	C871-329		
Wolden, Sam	C871-328		
Wood, John W., Jr.	C886-09	06-13-69	
Wood, MoShane & Thane-Colorado	C870-31		Rejected 01-11-70
Woods Exploration & Producing Company, Inc.	C871-270		
Woodtex Oil & Gas Company	C871-138		
Wray, William R.	C867-29		Returned 01-24-67
Wrightman Investment Company	C886-13	07-20-66	
Wynne, Robert M.	C871-265		
Yale Oil Association, Inc.	C871-189		
Yates Petroleum Corporation	C886-30	07-20-66	
Yates, S. P.	C870-32	12-03-69	
Yinger, W. R.	C871-128	08-19-71	
Yingling Oil, Inc.	C871-60		
Youngblood, J. Lee	C871-76		
Yucca Petroleum Company	C886-19	04-08-66	
Yuronka, John	C867-20	12-20-66	
Zachary, J. M.	C886-53	06-14-66	
Zalles, James; Zalles, Sol and Leub, Sidney	C871-458		
Zoller, Dorothy Webb	C886-25	09-27-67	
Zoller, Victor H.	C886-36	09-26-66	
Zonne, R. J.	C886-35	04-15-69	

See footnote on p. 63a.

APPENDIX G

The Natural Gas Act, 15 U.S.C. 717, *et seq.*, provides in pertinent part:

Section 4, 15 U.S.C. 717c:

RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES

(a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject

to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission, or gas distributing company¹² or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into

effect; ¹² and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

Section 5, 15 U.S.C. 717d:

**FIXING RATE AND CHARGES; DETERMINATION OF
COST OF PRODUCTION OR TRANSPORTATION**

(a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-

gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas.

Section 7, 15 U.S.C. 717f:

CONSTRUCTION, EXTENSION, OR ABANDONMENT OF FACILITIES; CERTIFICATE OF CONVENIENCE AND NECESSITY; CONDEMNATION PROCEEDINGS

(a) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transpor-

tation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers,

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

(c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however*, That if any such natural-gas company or predecessor in interest was bona

fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

(d) Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require.

(e) Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

(f) The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization.

(g) Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company.

(h) When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate,

and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines; it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds \$3,000.

Section 16, 15 U.S.C. 717o:

ADMINISTRATIVE POWERS OF COMMISSION; RULES,
REGULATIONS, AND ORDERS

The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this act; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commis-

sion shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.